

# NEW



# REGISTER

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## THE JOURNAL OF THE AGENCY RULEMAKING

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(Includes adopted rules filed through January 22, 1993)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 21, 1992**  
See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT JANUARY 19, 1993**

### RULEMAKING IN THIS ISSUE

#### EXECUTIVE ORDER

##### OFFICE OF THE GOVERNOR

Executive Order No. 80(1993): Continuing State of  
Emergency at State correctional facilities ..... 621(a)

#### RULE PROPOSALS

**Interested persons comment deadline ..... 620**

##### AGRICULTURE

Recommendation of agricultural management practices ... 622(a)

##### BANKING

Cemetery Board: location of interment spaces and path  
access ..... 623(a)

##### COMMUNITY AFFAIRS

Uniform Construction Code: mechanical inspectors ..... 624(a)

##### ENVIRONMENTAL PROTECTION AND ENERGY

Board of Commissioners of Pilotage: Drug Free  
Workplace Program ..... 625(a)  
Control and prohibition of air pollution from oxides of  
nitrogen ..... 631(a)

##### HEALTH

Creation of birth record: reopening of comment period . 660(a)  
Packing of refrigerated foods in reduced oxygen  
packages by retail establishments: preproposal ..... 660(b)  
Retail food establishments and food and beverage  
vending machines ..... 662(a)  
Limited purpose laboratories ..... 668(a)

##### HIGHER EDUCATION

County college construction projects ..... 668(b)

##### HUMAN SERVICES

Community mental health services: children's partial care  
programs ..... 669(a)

#### LAW AND PUBLIC SAFETY

Violent Crimes Compensation Board: reimbursement  
for funeral expenses ..... 674(a)  
Violent Crimes Compensation Board: attorney's fees  
requiring affidavit of service ..... 674(b)

#### TRANSPORTATION

Parking restrictions along Route 27 in Linden and  
Route 15 in Dover ..... 675(a)

#### TREASURY-GENERAL

State Prescription Drug Program; Dental Expenses  
Program ..... 675(b)

#### TREASURY-TAXATION

Gross Income Tax: partnerships; net profits from  
business ..... 677(a)

#### TURNPIKE AUTHORITY

Double bottom trailer permits ..... 684(a)

#### CASINO CONTROL COMMISSION

Equal employment opportunity ..... 684(b)

#### RULE ADOPTIONS

##### PERSONNEL

Notice of termination at end of working test period:  
administrative correction ..... 686(a)

##### COMMUNITY AFFAIRS

Continuing care retirement communities ..... 686(b)

##### EDUCATION

Medical examination requirement for interscholastic  
athletic participation ..... 686(c)

##### ENVIRONMENTAL PROTECTION AND ENERGY

Statewide Stormwater Permitting Program: administrative  
corrections ..... 687(a)

(Continued on Next Page)

# INTERESTED PERSONS

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 18, 1993**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## RULEMAKING IN THIS ISSUE—Continued

Atlantic sturgeon management .....	689(a)
Solid waste collection regulatory reform .....	692(a)
<b>HEALTH</b>	
Computerized tomography services: certification of need .....	700(a)
Megavoltage radiation oncology services: certification of need .....	701(a)
Bed need methodology for adult comprehensive rehabilitation services .....	703(a)
<b>HUMAN SERVICES</b>	
New Jersey Care—Special Medicaid Program scope: administrative correction .....	704(a)
<b>LAW AND PUBLIC SAFETY</b>	
Electrical contractor's business permit: telecommunications wiring exemption .....	705(a)
Bio-analytical laboratory directorships: license fees .....	708(a)
Physician assistant licensing fees .....	709(a)
Mortuary Science: licensee advertising; referral fee prohibition .....	709(b)
Violent Crimes Compensation Board: moneys received from other sources by claimants .....	710(a)
Division of Criminal Justice: distribution of forfeited property .....	710(b)
<b>TREASURY-GENERAL</b>	
Purchase of service credit in State retirement systems ....	710(c)
Public Employees' Retirement System: election of member-trustee .....	711(a)
<b>TREASURY-TAXATION</b>	
Background investigations of applicants for Division positions .....	711(b)
Gross income tax refunds and homestead rebates: priorities in claims to setoff .....	711(c)
<b>ELECTION LAW ENFORCEMENT COMMISSION</b>	
Public financing of primary election for Governor: administrative corrections .....	711(d)
<b>CASINO CONTROL COMMISSION</b>	
Issuance of temporary license credentials .....	712(a)
Commission fees .....	713(a)
Exchange of coupons for chips at gaming tables .....	717(a)
Primary storage areas for cards and dice; daily collection of used cards and dice .....	719(a)

## PUBLIC NOTICES

### EDUCATION

Public testimony session on proposed rules regarding school districts, adult education, and certification fees .....

### CORRECTIONS

On-the-spot inmate correction: petition for rulemaking regarding appeal to facility superintendent .....

### ENVIRONMENTAL PROTECTION AND ENERGY

Site Remediation Program: issue paper on DEPE authority to assign treble damages collection right .....

Statewide Municipal and Industrial Solid Waste Management Plan Update, 1993-2002: public hearings and submission of written comments .....

Green Acres Nonprofit Acquisition Grant Program .....

Monmouth County water quality management: Morganville .....

### LAW AND PUBLIC SAFETY

Division of Criminal Justice: agency response to petition to amend forfeited property distribution rules .....

## INDEX OF RULE PROPOSALS

AND ADOPTIONS .....

### Filing Deadlines

<b>March 15 issue:</b>	
Adoptions .....	February 22
<b>April 5 issue:</b>	
Proposals .....	March 8
Adoptions .....	March 15
<b>April 19 issue:</b>	
Proposals .....	March 19
Adoptions .....	March 26
<b>May 3 issue:</b>	
Proposals .....	April 2
Adoptions .....	April 12

## NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

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# EXECUTIVE ORDER

(a)

**OFFICE OF THE GOVERNOR  
Governor Jim Florio  
Executive Order No. 80(1993)  
Prisons and Other Penal and Correctional  
Institutions  
State of Emergency  
Continuation of Prior Executive Orders**

Issued: January 15, 1993.

Effective: January 15, 1993.

Expiration: Indefinite.

WHEREAS, the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, as of January 1993 the total adult inmate population of State-sentenced prisoners was 22,277, including 2,896 State-sentenced inmates in county jails; and

WHEREAS, the State's adult and youth correctional institutions are currently operating at 131 percent of design capacity; and

WHEREAS, these conditions continue to endanger the safety, welfare, and resources of the residents of this State; and

WHEREAS, from June 1981, when Executive Order No. 106(Byrne) was issued, until this month, the population of State-sentenced prisoners grew from 7,940 to 22,277, far exceeding all predictions for inmate population growth and seriously and dangerously taxing all State correctional facilities; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property, and resources of the State and mandates a centralized management approach to inmate housing assignments; and

WHEREAS, despite the construction of three new prisons designed for 3,000 inmates which now house 4,897 inmates at a construction cost of approximately \$150 million, expansions of all existing facilities, and the opening of a new facility at Fort Dix under a lease agreement with

the federal government that has been extended through the end of 1993, the prison population growth has consistently outstripped infrastructure expansion throughout the past decade, exacerbating crisis conditions; and

WHEREAS, efforts are continuing to address the problem, including the planned construction of a new prison facility to be operational by the end of 1995; and

WHEREAS, the Sentencing Policy Study Commission was recently created by statute to review the State's sentencing laws and policies, and the Commission's work may have a significant impact on future prison population; and

WHEREAS, Executive Order No. 52(Florio) of January 17, 1992, will expire on January 20, 1993; and

WHEREAS, the conditions specified in Executive Order No. 106(Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster, and in fact have worsened since that time as the prison population has expanded exponentially; and

WHEREAS, despite the severity of the crisis in the prison population of this State, the Appellate Division of the Superior Court has determined that executive authority to address these emergency conditions under the Civil Defense and Disaster Control Act expires on April 29, 1993; and

WHEREAS, the determination of the Appellate Division is currently on appeal before the New Jersey Supreme Court;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby declare a continuing state of emergency and ORDER and DIRECT as follows:

1. Executive Order No. 106(Byrne) of June 19, 1981; No. 108(Byrne) of September 11, 1981; No. 1(Kean) of January 20, 1982; No. 8(Kean) of May 20, 1982; No. 27(Kean) of January 10, 1983; No. 43(Kean) of July 15, 1983; No. 60(Kean) of January 20, 1984; No. 78(Kean) of July 20, 1984; No. 89(Kean) of January 18, 1985; No. 127(Kean) of January 17, 1986; No. 155(Kean) of January 12, 1987; No. 184(Kean) of January 4, 1988; No. 202(Kean) of January 26, 1989; No. 226(Kean) of January 12, 1990; No. 24(Florio) of January 18, 1991; and No. 52(Florio) of January 17, 1992, shall remain in effect until January 20, 1994, notwithstanding any sections in them stating otherwise, subject to the terms of any judicial order setting an earlier expiration date.

2. This Order shall take effect immediately.

# RULE PROPOSALS

## AGRICULTURE

### (a)

#### STATE AGRICULTURE DEVELOPMENT COMMITTEE

##### Agricultural Management Practices

**Proposed Repeal: N.J.A.C. 2:76-2.1**

**Proposed Repeal and New Rule: N.J.A.C. 2:76-2.3**

**Proposed New Rules: N.J.A.C. 2:76-2.2 and 2.4**

**Proposed Amendment: N.J.A.C. 2:76-2.2**

Authorized By: State Agriculture Development Committee,

Arthur R. Brown, Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f, 6, 7 and 11.

Proposal Number: PRN 1993-72.

Submit comments by March 18, 1993 to:

Donald D. Applegate

Executive Director

State Agriculture Development Committee

CN 330

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

One of the statutorily mandated duties of the State Agricultural Development Committee (SADC) is to study, develop and recommend to the appropriate State departments and agencies a program of agricultural management practices.

The proposed amendments and new rules broaden the existing rules concerning the recommendation of agricultural management practices. The existing rules only deal with agricultural management practices in the context of dispute proceedings among municipalities, farmers and the general public. The proposed amendments and new rules, while providing for a mediation role for the State Agriculture Development Committee, establish a procedure by which farmers, organizations, or general public may request the SADC to recommend agricultural management practices. The SADC may recommend agricultural management practices on its own initiative.

In recommending an agricultural management practice, the SADC may call on various agencies, organizations or persons with expertise such as the New Jersey Department of Agriculture, the State Soil Conservation Committee, County Agriculture Development Boards and the New Jersey Agricultural Experiment Station. At the SADC's recommendation, the agricultural management practices are forwarded to the appropriate State department and agencies.

The rules also make it clear that commercial farm owners or operators may utilize these recommended agricultural practices to receive the protections afforded by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11. Moreover, the proposal replaces the previous non-binding dispute procedure rule with a rule setting forth a mediation role for the SADC in conformance with the Right to Farm Act, specifically N.J.S.A. 4:1C-6d.

#### Social Impact

The proposed amendments and new rules affect farmers, State instrumentalities and members of the general public. The proposed new rules set forth a process by which members of these groups can request the SADC to recommend agricultural management practices. If a commercial farm operation conforms with recommended agricultural management practices and relevant Federal and State law and is nonthreatening to public health and safety, it receives protection against municipal regulations and private nuisance suits. The rule sets forth a 120 day period of negotiation during which time the SADC and State instrumentalities regulating agriculture in a manner inconsistent with recommended agricultural management practices seek to negotiate a mutually agreeable solution to the conflict. However, this does not impose any additional burdens on the affected groups since the negotiation period is statutorily mandated.

#### Economic Impact

The proposed amendments and new rules will have a positive economic impact on commercial farm operations. Farmers who conform with agricultural management practices recommended by the SADC and other statutory requirements will receive the protection from municipal regulations and private nuisance suits afforded by the Right to Farm Act and the Agriculture Retention and Development Act.

#### Regulatory Flexibility Statement

Many commercial farm operations are small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendments and new rules do not impose reporting, recordkeeping or compliance requirements on commercial farm operations. It is the pertinent statutes which mandate compliance with the recommended agricultural management practices in order for a farmer to receive the benefits of the Right to Farm Act and the Agricultural Retention and Development Act. Therefore, no differing standards based on business size need be offered.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

#### [2:76-2.1 Applicability

(a) This subchapter applies to all commercial farm operations conforming to the following:

1. Agricultural management practices approved by the State Agriculture Development Committee.
2. All relevant Federal or State statutes or rules and regulations.
3. Not being a direct threat to public health and safety.]

#### 2:76-[2.2]2.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural management practices" means practices [either formally set forth in current published New Jersey Agricultural Experiment Station recommendations or practices which represent the best collective professional judgment and opinion of the appropriate faculty of the New Jersey Agricultural Experiment Station and practices related to soil and water conservation and management approved by the State Soil conservation committee] **which have been recommended by the State Agriculture Development Committee for use on farmland which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management and labor practices.**

"State Soil Conservation Committee" means an agency of the State established pursuant to N.J.S.A. 4:24-1 et seq.

#### [2:76-2.3 Dispute procedures

(a) The following procedure shall be utilized to advise and assist municipalities, farmers and the general public with respect to resolving disputes concerning agricultural management practices involving the operation of a commercial farm:

1. All disputes shall be presented by one or both parties directly to the respective board representing the agricultural operation.
2. For counties without a board, the dispute shall be presented to the State Agriculture Development Committee.
3. The board or committee shall establish in each case a reasonable time within which a written statement of finding shall be provided.
4. The board or committee shall establish and implement fact-finding procedures using expertise from governmental agencies or other appropriate sources.
5. Following fact-finding, the board or committee shall provide a written statement of finding regarding the conformance of the agricultural operation with agricultural management practices approved by the committee.
6. Following the presentation of a dispute, the board or committee shall encourage and provide mediation.

7. No statement or expression of opinion made by any party in the course of a meeting concerning the dispute shall be deemed admissible in any subsequent judicial proceeding.]

#### 2:76-2.2 Recommendations of agricultural management practices

(a) The Committee at its initiative may recommend agricultural management practices.

(b) Any person or organization may request the Committee to recommend agricultural management practices.

(c) In considering agricultural management practices, the Committee may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The New Jersey Agricultural Experiment Station;
3. County Agriculture Development Boards;
4. The State Soil Conservation Committee; or
5. Any other organization or person which may provide expertise concerning the particular practice.

(d) Upon the Committee's recommendation, the agricultural management practice shall be forwarded to the appropriate State department and agencies.

#### 2:76-2.3 Utilization of agricultural management practices

The agricultural management practices recommended by the Committee may be utilized by owners and operators of commercial farms to receive protection afforded pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31 and Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

#### 2:76-2.4 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices

The Committee shall upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the Committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the Committee of the reasons for accepting, conditionally accepting or rejecting the Committee's recommendations and submit a schedule for implementing all or a portion of the Committee's recommendations.

## BANKING

### (a)

#### NEW JERSEY CEMETERY BOARD

##### Location of Interment Spaces

**Proposed Amendment: N.J.A.C. 3:41-2.1**

**Proposed New Rules: N.J.A.C. 3:41-11**

Authorized By: New Jersey Cemetery Board, William Ingling,  
Executive Director.

Authority: N.J.S.A. 8A:2-2 and 8A:6-11.

Proposal Number: PRN 1993-74.

Submit comments by March 18, 1993 to:  
William Ingling, Executive Director  
New Jersey Cemetery Board  
20 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

N.J.S.A. 8A:6-11 requires, among other things, that when a cemetery company plots out new areas for interment, it must maintain paths to interment spaces already sold. The Cemetery Board is proposing herein amendments to N.J.A.C. 3:41-2.1 to define what constitutes a "path" and concomitantly new rules setting forth what actions a cemetery company must take in order to comply with the path requirement. This elaborates the statutory requirements for "maintaining a path." The

purpose of the amendments and new rules is to ensure that cemetery companies maintain continuous paths which provide access to interment spaces already sold.

#### Social Impact

The proposed amendments and new rules primarily elaborate the statutory requirement and will have little social impact. However, in certain circumstances, it guarantees lot owners access to their property and provides others with access to the graves of their friends and loved ones. Moreover, the access provided by the new rules will prevent undue pedestrian and equipment traffic over gravesites.

#### Economic Impact

Depending on the amount of unused land which is available to a cemetery company for future interments, the economic consequences of the proposed amendments and new rules on the cemetery company will vary. For instance, the amendments and new rules make it clear that a cemetery company may make interments in certain portions of ground provided that a continuous path remains which has a minimum width of 24 inches and which still provides access. Hence, a cemetery with very wide courses or ways, other than avenues and other roadways, can create and sell new plots in these areas as long as the required path is maintained. However, some cemetery companies may be adversely affected because they would have to replot any interment spaces they have already laid out if those spaces violate these rules, while other cemetery companies which do not have the requisite space would be precluded from utilizing the path area for new interments. In the opinion of the Board, these adverse effects will be more than offset by the other cases in which cemetery companies can utilize wide areas for new interment spaces and still maintain a path as defined.

#### Regulatory Flexibility Analysis

The proposed amendments and new rules would apply to all cemetery companies, virtually all of which fall within the definition of the term "small business" in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no exceptions were made in the amendments and new rules to accord different treatment to small businesses. The amendments and new rules require that paths to interment spaces already sold be maintained when a cemetery company plots out new areas for interment. The Board notes, however, that no reporting or recordkeeping requirements are imposed. The economic consequences of the proposed amendments and new rules are discussed in the Economic Impact above. In the event that replotting is necessary, the professional services of a surveyor may be required, with costs varying depending on the individual employed and the amount of replotting. Finally, to the extent that cemetery companies in this State include both large and small businesses, the intention of the proposed amendments and new rules is to regulate all equally. The amendments and rules are vital to preserving the rights of access of cemetery plot owners, which outweighs any lack of differential treatment in their provisions.

**Full text of the proposal follows (additions indicated in boldface thus):**

#### 3:41-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

....  
"Avenue" shall mean a public way, street or thoroughfare.

....  
"Path" means a continuous course or way which has a minimum width of 24 inches and which primarily provides pedestrian access to interment spaces already sold, but a path shall not include an avenue or other roadway or areas reserved or set apart for building purposes.

....  
"Roadway" means any open way for the passage of vehicles and persons.

....  
"Sold" means that a contract for the sale of the interment space has been executed by the purchaser.

#### SUBCHAPTER 11. LOCATION OF INTERMENT SPACES

##### 3:41-11.1 Use of cemetery land

(a) A cemetery company shall maintain paths to interment spaces already sold when the cemetery company lays out portions of

grounds into interment spaces pursuant to N.J.S.A. 8A:6-11. When a cemetery company resurveys, alters, changes or modifies a portion of its grounds previously laid out on a map or maps into such interment spaces, the definition of "path" at N.J.A.C. 3:41-2.1 shall apply.

(b) This subchapter shall not apply to the laying out of portions of ground in areas of cemetery property which have not previously been laid out on a map or maps into paths or interment spaces.

#### 3:41-11.2 Applicability to existing sales and interments

(a) An unsold interment space which, on the effective date of this rule, is plotted in a manner that does not conform with this subchapter shall not be sold or used for interment purposes.

(b) If, on the effective date of this rule, a sold interment space, in which no interment has been made, is plotted in a manner which makes a path non-conforming, the cemetery company shall exercise due diligence and negotiate in good faith with the lot owner for the transfer or exchange of the lot owner's non-conforming space with other space that conforms with this provision. Thereafter, the non-conforming plot shall be replotted or eliminated. The transfer or exchange of the non-conforming plot shall be provided at no expense to the lot owner beyond what the lot owner agreed to pay for the non-conforming plot.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Uniform Construction Code Municipal Enforcing Agency Fees Mechanical Inspectors

##### Reproposed New Rule: N.J.A.C. 5:23-5.19A Reproposed Amendments: N.J.A.C. 5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.21, 5.22, 5.23, and 5.25

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1993-62.

Submit comments by March 18, 1993 to:

Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, NJ 08625-0802  
FAX No. (609) 633-6729

The agency proposal follows:

#### Summary

This reproposal would establish a new category of licensure, that of mechanical inspector. This reproposal replaces the proposal published in the New Jersey Register on October 5, 1992, at 24 N.J.R. 3457(a). In response to that proposal, the Building Code Officials Association commented that the provisions of the October proposal were not a problem in every town, the New Jersey Builders Association expressed concern that the provisions would be mandatory, and Public Service Electric and Gas Company supported the proposal.

The Department has chosen to provide the options in the proposal, for those situations where it can be helpful. The amendments provide an option, not a requirement.

In this new proposal, in contrast to the earlier one, the mechanical inspector is not given responsibility for electrical inspections. Consequently, all testing requirements that relate to the National Electric Code have been deleted.

Although the State Uniform Construction Code contains a mechanical subcode, the current rules divide mechanical code responsibilities among the officials enforcing the building, fire protection, and plumbing subcodes. This often makes it necessary for three inspectors to inspect one piece of mechanical equipment. For example, a single-family homeowner installing a gas-fired water heater would currently be subject to building,

plumbing, and fire protection inspections, in addition to the electrical inspections, with fees for each. Not only is this duplicative and overly expensive to the homeowner, but it is also inefficient from the standpoint of code enforcement officials, who must each travel to a site to check one code section item on a given installation.

If one of the existing inspectors or subcode officials obtains a mechanical license, mechanical plan review and inspections of a Use Group R-3 or R-4 structure, can be completed by that one inspector. If the mechanical inspector has a subcode official license in another area, he may sign off on inspection and plan review. If the mechanical inspector does not have a subcode official license in any other subcode area, the construction official may assign a subcode official to approve the mechanical inspector's work.

Mechanical licensure will be available to currently qualified inspectors who pass the following national certification tests:

4A Mechanical 1 and 2 family

4B Mechanical General

Successful results from any of these tests taken previously will be accepted. No additional experience or courses will be required. However, to maintain mechanical licensure, 1.0 continuing educational units (CEU) in technical subjects will be required to be completed for each two year renewal period, in addition to any other requirements for a given licensee with other continuing education requirements. Any mechanical licensee who is subject to any license revocation shall also lose his or her mechanical license.

The employment of a mechanical licensee by any municipality will be voluntary, and the classification of a municipality as "Class I, II or III" will not be affected by the presence or absence of a licensed mechanical inspector on staff.

In 1994, there will be a national certification test for "Mechanical Plan Review." It is contemplated that a later proposal could expand the requirements and duties of mechanical licensees, if the changes now being proposed prove successful.

Under these repropoed amendments and new rule, a mechanical licensee would perform plan review and would inspect, for example, oil and gas-fired forced hot air furnaces, hot water or steam boilers, air conditioning equipment, hot water heaters and heat pumps in any Use Group R-3 or R-4 structures. Municipalities will be able to have more than one mechanical inspector. Because the mechanical inspector would make the site visits, the burden on other officials would be lessened.

#### Social Impact

Once inspectors have earned mechanical certification, plan review and code enforcement inspections for Use Group R-3 or R-4 structures will be simplified. While the State Uniform Construction Code has long contained a mechanical subcode, no licensure has previously been available in this area. Mechanical review and inspection tasks have therefore been performed separately by the other subcode inspectors. This has often necessitated site visits by numerous individuals. A mechanical license will enable one person to perform initial plan review and site inspections. This will make the process more efficient and benefit both builders and property owners and enforcing agencies.

#### Economic Impact

The Department anticipates that mechanical licensure, by reducing the need for multiple site visits by different inspectors, will save money for homeowners, builders, and code enforcement agencies because fees are required to be based upon the costs incurred in performing inspections and cost savings should therefore be reflected in lower fees.

#### Regulatory Flexibility Statement

The proposed amendments and new rules impose no requirements on small businesses, as the term is defined in the Regulatory Flexibility Statement, N.J.S.A. 52:14B-16 et seq. The added provisions for mechanical inspector licensure affect the municipalities which enforce the Uniform Construction Code, and simplify the process of inspection. A secondary effect upon property owners, few of whom are small businesses, is the decreased cost of inspections, via the improved system of coordinating mechanical inspections.

Full text of the proposal follows (additions indicated with bold face **thus**; deletions indicated with brackets [thus]):

#### 5:23-3.4 Responsibility

(a)-(i) (No change.)

(j) **A mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall**

have responsibility for enforcement of all provisions of the code, except electrical, relating to the installation of mechanical equipment, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, in Use Group R-3 or R-4 structures.

#### 5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-7. (No change.)

**8. A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspections, with oversight by a designated subcode official, for Use Group R-3 or R-4 structures.**

(b)-(d) (No change.)

#### 5:23-4.18 Standards for municipal fees

(a)-(b) (No change.)

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building[,], or, in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1.-4. (No change.)

**5. The municipality shall set a flat fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.**

#### 5:23-4.20 Departmental fees

(a)-(b) (No change.)

(c) Departmental (enforcing agency) fees shall be as follows:

1.-8. (No change.)

**9. The fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector shall be \$43.00 for the first device and \$10.00 for each additional device. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.**

#### 5:23-5.3 Types of licenses

(a) (No change.)

(b) Rules concerning classification of code enforcement officials are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for, and may be licensed in, the following specialties:

i.-vi. (No change.)

**vii. Mechanical inspector: Mechanical inspectors are authorized to carry out field inspection and plan review work for all work under the mechanical subcode in Use Group R-3 or R-4 structures. Only a person already holding a valid inspector's license may apply for a mechanical inspector's license.**

2. (No change.)

#### 5:23-5.5 General license requirements

(a)-(c) (No change.)

(d) Special provisions:

1. (No change.)

**2. An applicant licensed as an inspector may apply for a mechanical inspector's license to perform mechanical inspections of Use Group R-3 or R-4 structures.**

#### 5:23-5.19A Mechanical inspector requirements

**(a) A person validly licensed as an inspector in any subcode may apply for a mechanical inspector's license qualifying such person to perform mechanical inspections of Use Group R-3 or R-4 structures, if that person successfully completes the examinations required by N.J.A.C. 5:23-5.23.**

**(b) Notwithstanding the three-year time limit set forth in N.J.A.C. 5:23-5.5(b)4, results from any of the examinations already successfully completed and currently used for licensure may be submitted at the time of application and, in such case, examinations need not be re-taken.**

#### 5:23-5.21 Renewal of license

(a)-(c) (No change.)

(d) Continuing education requirements are as follows:

1.-3. (No change.)

**4. To maintain a mechanical inspector's license, 1.0 CEU (technical) shall be completed, as required by this section, in addition to any other CEU requirements for other licenses held.**

#### 5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1. A non-refundable application fee of \$43.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Mechanical Inspector license.

ii.-iii. (No change.)

2.-6. (No change.)

#### 5:23-5.23 Examination requirements

(a)-(c) (No change.)

(d) Requirements for specific licenses are as follows:

1.-11. (No change.)

**12. Examination requirements for mechanical licensure are:**

**i. Successful completion of the National Certification Test, 4A Mechanical, 1 and 2 family; and**

**ii. Successful completion of the National Certification Test, 4B Mechanical General.**

(e)-(f) (No change.)

#### 5:23-5.25 Revocation of licenses and alternative sanctions

(a)-(c) (No change.)

**(d) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.**

## ENVIRONMENTAL PROTECTION AND ENERGY

(a)

### BOARD OF COMMISSIONERS OF PILOTAGE Rules of the Board of Commissioners of Pilotage Drug Free Workplace Program

#### Proposed New Rules: N.J.A.C. 7:61-3

Authorized By: Board of Commissioners of Pilotage,

Hon. Edward B. Pulver, President.

Authority: N.J.S.A. 12:8-2.

Proposal Number: PRN 1993-70.

Submit written comments by March 18, 1993 to:

Hon. Frank Johannessen

Secretary-Treasurer

New Jersey Board of Commissioners of Pilotage

P.O. Box 1022

Rahway, New Jersey 07065

The agency proposal follows:

#### Summary

The Board of New Jersey Commissioners of Pilotage ("Board") is proposing new rules, N.J.A.C. 7:61-3, establishing a chemical drug and alcohol testing program for all New Jersey licensed pilots and registered apprentices. Pursuant to these rules, the Board is requiring the United New Jersey Sandy Hook Pilots' Benevolent Association and the United New Jersey Sandy Hook Pilots' Association (collectively referred to as "Association") to implement the chemical drug and alcohol testing program. These rules are based in large part on the regulations adopted by the Federal Department of Transportation, Coast Guard, governing chemical drug and alcohol testing of commercial vessel personnel, 46 CFR part 16.

**Purpose**

The purpose of these rules is to require various forms of chemical drug and alcohol testing of all New Jersey licensed pilots and registered apprentices because of the health, safety and environmental concerns associated with potential chemical drug and alcohol use by pilots and apprentices navigating vessels. The forms of chemical drug and alcohol testing include preemployment testing, random sampling testing, reasonable belief testing and post-incident testing. Preemployment testing and random sampling testing consist of drug testing while post-incident testing and reasonable belief testing will consist of both drug and alcohol testing. Prior to a pilot or apprentice who has been suspended pursuant to these rules being permitted to return to work, such pilot or apprentice will be subjected to chemical drug and alcohol tests. In the event that these chemical drug and alcohol tests are negative and the pilot or apprentice is permitted to return to work, such pilot or apprentice will be subject to follow-up chemical drug and alcohol testing for a period of up to 60 months.

**Implied Consent**

The Board is proposing an implied consent provision meaning that all New Jersey licensed pilots and registered apprentices are deemed to have consented to submit to chemical drug or alcohol testing as a condition of licensure or registration. Therefore, all New Jersey licensed pilots and registered apprentices are subject to chemical drug testing pursuant to these regulations.

**Preemployment Testing**

Preemployment chemical drug testing for dangerous drugs is required of all apprentices before appointment or employment by the Association. No apprentice shall know in advance of the specific date of the testing.

**Random Testing**

Random chemical drug testing is the most important component of this drug testing program because it has been proven by the Coast Guard's drug testing program to be an effective method of deterring of drug use and of detecting to drug use. The Board has established an annual 50 percent random sampling rate based on the Coast Guard's finding that an annual 50 percent sampling rate provides a sufficient deterrent without being excessive or overly restrictive. The rules require that all pilots and apprentices have an equal chance of being tested and that no pilot or apprentice shall know in advance of the specific date of the testing.

**Post-Incident Testing**

Chemical drug testing is being required of all pilots and apprentices directly participating in the navigation of a vessel involved in an incident of death, injury to a person beyond first aid, property damage in excess of \$10,000 or a discharge of a hazardous substance. Although many times the extent of injuries, damages or environmental impact is difficult to assess at the time of an incident, the Association is required to make a good-faith judgment as to whether an incident falls within the requirements for chemical drug testing. Because of the speed within which evidence of drugs and alcohol dissipate and the variability of the time frames for dissipation of the evidence based on an individual's metabolism, these rules require that the chemical drug testing for dangerous drugs and alcohol be done as soon as practicable but not later than eight hours after the incident. Again, the Board is imposing on good-faith judgment upon the Association in the implementation of "as soon as practicable."

**Reasonable Belief Testing**

The most difficult aspect of this testing program is reasonable belief testing because of the subjective nature of the triggering event. Notwithstanding the subjective nature of such testing, it is important that the Association have the flexibility to administer a chemical drug test to an individual it believes to have used or be using dangerous drugs or alcohol prior to an incident occurring. Because of this subjectivity and the potential for employee harassment, the concurrence of two pilots licensed by New Jersey or New York (Sandy Hook pilots) is required in most situations before an individual is required to be tested. It is recognized, however, that in some situations the concurrence of two Sandy Hook pilots is not practical. The potential for injury resulting from drug or alcohol use is so great that in these situations the need for testing outweighs the requirement that two pilots concur in the decision to require testing.

**Alcohol Testing Procedures**

Chemical drug testing for alcohol shall be conducted by a two-step process. Initial screening shall be performed by using a portable breathalyzer, the *BreathScan* or its equivalent. The National Highway Traffic Safety Administration has tested this unit and found it to be suitable as a first line test for breath alcohol concentration (BAC) quantification.

A color change in the testing unit indicating BAC levels at or above the 0.04 percent level will require follow-up blood testing in order to confirm the precise alcohol level.

**Environmental Impact**

The implementation of the proposed new rules will have a positive impact on the environment.

At present the Board has no data to specifically identify the extent to which there has been any environmental harm suffered as a result of drug or alcohol use. The potential for serious environmental damage as a result of maritime accidents, however, is readily apparent especially in the wake of the Exxon Valdez incident and the numerous recent oil spills in New Jersey. Although the Board is not contending that these specific incidents were caused by drug or alcohol use, individuals using drugs or alcohol are certainly in a position to cause or contribute to such maritime incidents which, as has been seen in the past, can cause serious environmental harm. The Board anticipates that deterring and detecting drug and alcohol use by pilots and apprentices will significantly reduce the risk of maritime accidents and, consequently, also reduce the risk of harm to the environment.

**Regulatory Flexibility Statement**

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Association or the practice of piloting may be deemed to constitute a "small business" within the meaning of the statute, the following statement is applicable:

The Board has determined that the proposed new rules concerning drug and alcohol testing will not impose new or additional reporting, recordkeeping, or other compliance requirements on small businesses because most of the requirements of the proposed new rules are presently required by the Federal Department of Transportation, Coast Guard. Therefore, a regulatory flexibility analysis is not required.

**Drug Testing Procedures**

The Board is incorporating by reference most of the Federal Department of Transportation's "Procedures for Transportation Workplace Drug Testing Programs," codified at 49 CFR Part 40. The Board has determined to use these procedures because much of the drug testing program being proposed is based upon the Federal Department of Transportation's drug testing program which has been in effect for almost four years. The chemical drug test for dangerous drugs is done through a urine sample. First, a urine specimen is screened by an immunoassay to determine whether the specimen is positive for five drugs or classes of drugs (marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine and amphetamines). All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques.

**Medical Review Officer**

Another important aspect of this chemical drug and alcohol testing program is the requirement that the Association designate a Medical Review Officer (MRO) who is a licensed physician with experience in chemical drug testing. The MRO will evaluate and verify the results of chemical drug tests for both dangerous drugs and alcohol reported by an independent, Federally certified drug testing laboratory. The MRO's verification will operate as safeguard against false positive test results by interpreting test results and examining alternate medical explanations for positive test results. The MRO will also notify all individuals with positive test results and offer such individuals an opportunity to discuss their test results.

**Revocation or Suspension of License**

Pursuant to N.J.S.A. 12:8-1 et seq. the Board shall suspend or revoke the license/registration of a pilot or apprentice who violates the Act, or orders of the Board which includes this subchapter. A pilot or apprentice's failure to comply with this subchapter by, including, but not limited to, refusing to take a chemical drug test, being intoxicated either while on duty or subject to being called on duty or during the four hour period prior to either being on duty or subject to being called on duties, failing a chemical drug or alcohol test required by this subchapter or required under Federal law or being convicted of a Federal or State criminal drug

statute shall, therefore, subject the pilot or apprentice to license/registration suspension or revocation.

With respect to alcohol intoxication by a pilot while on duty, N.J.S.A. 12:8-1 et seq. sets forth specific penalties which are incorporated in these rules. For a first offense, the Board shall, among other things, suspend the pilot for six months. For a second offense, the Board shall permanently revoke the pilot's license. The Board shall permanently revoke the registration of an apprentice for a first offense of alcohol intoxication while on duty.

The Board may not suspend or revoke the license/registration of a pilot or apprentice without first affording the pilot or apprentice the opportunity for a hearing, N.J.S.A. 12:8-21, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:1. The pilot or apprentice must be given written notice of the hearing 15 calendar days prior to the hearing but, because of health, safety and environmental concerns, these rules establish a requirement that after the MRO has verified a chemical drug or alcohol test as positive or after a conviction, but, prior to a hearing before the Board, the pilot or apprentice is prohibited from engaging in pilotage operations.

In the event that a pilot or apprentice's license/registration is suspended, the pilot or apprentice must pass a chemical drug test for dangerous drugs and alcohol prior to returning to work. In addition, the pilot or apprentice shall be subject to increased, unannounced chemical drug testing for dangerous drugs and alcohol at the pilot or apprentice's expense for a period of up to 60 months.

#### Incorporation by Reference

The proposed rules incorporate provisions of the Federal Department of Transportation Drug Testing Program and Procedures for Transportation Workplace Drug Testing Programs. Specifically, the Board has incorporated all the types of drug testing that the Federal regulations establish; the .04 percent standard for alcohol intoxication; drug testing procedures; and the requirement for a medical review officer. The proposed rules expand on the Federal regulations by specifying grounds for revocation or suspension and the procedure for such as provided by N.J.S.A. 12:8-1 et seq.

The Department of Environmental Protection and Energy and other State agencies commonly incorporate other laws and regulations, including test procedures, by reference. The rules of the Office of Administrative Law specifically allow incorporation by reference, N.J.A.C. 1:30-2.2. See, for example, the Safe Drinking Water regulations, specifically, N.J.A.C. 7:10-1.3 and the New Jersey Pollutant Discharge Elimination System regulations, specifically, N.J.A.C. 7:14A-1.9.

Any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter will not be incorporated in this subchapter or become operative in New Jersey unless the Board proposes an amendment to this subchapter, and provides an opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

#### Social Impact

These proposed rules will have a positive social impact. Drug and alcohol abuse are one of society's most serious problems. As the Supreme Court recently noted in *Hennessey v. Coastal Eagle Point Oil Company*, 129 N.J. 81, 116 (July 20, 1992) (Pollock J., concurring) "[t]he legislature has found that the unlawful use, manufacture and distribution of controlled dangerous substances continues to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State. N.J.S.A. 2C:35-1.1(b)." Drug and alcohol abuse becomes a compelling problem with respect to pilots and apprentices because of the urgent need to ensure public safety, health and the environment. Pilots and apprentices in their navigation of vessels are responsible not only for the safety and health of the crew members of those vessels, but also for the public at large, especially for the public located in the immediate area of a potential maritime accident. The responsibilities of pilots and apprentices also extend to the environment and the natural resources of New Jersey. It is anticipated that these rules will deter and detect drug and alcohol use by pilots and apprentices so that the risk of a serious maritime accident is greatly reduced.

The only organization subject to these rules is the Association. No other New Jersey businesses are expected to be affected. Because all of the pilot boats used for pilot service by New Jersey licensed pilots and registered apprentices are owned in whole or in part by the Association, all New Jersey licensed pilots and registered apprentices are subject to these rules.

#### Economic Impact

The Association will bear most of the costs associated with implementing these rules. Pilots or apprentices will bear the costs associated with return to work and follow-up chemical drug and alcohol testing required after suspension of their license/registration.

These rules create no additional costs to the Association because essentially all of the chemical drug and alcohol testing being required pursuant to these rules is already required and is presently being done by the Association in accordance with the Federal Department of Transportation regulations.

Full text of the proposed new rules follows:

### SUBCHAPTER 3. DRUG FREE WORKSHOP PROGRAM

#### 7:61-3.1 Scope, authority and purpose

(a) The purpose of this subchapter is to implement the New Jersey Board of Commissioners of Pilotage's ("Board") policy to maintain a drug and alcohol-free workplace. Pursuant to N.J.S.A. 12:8-1 et seq., the Board is the agency of the State of New Jersey responsible for licensing and regulating pilots and apprentices of the State. In carrying out this responsibility, the Board is firmly committed to the protection of the environment and to the safest and most efficient operation of all ports and waters served by New Jersey licensed pilots and registered apprentices. It is the Board's responsibility, pursuant to N.J.S.A. 12:8-1 et seq., to ensure that all New Jersey licensed pilots and registered apprentices are competent and fit for duty, and to maintain public confidence in New Jersey licensed pilots and registered apprentices. To carry out this responsibility, the Board is requiring the United New Jersey Sandy Hook Pilots' Benevolent Association and the United New Jersey Sandy Hook Pilots' Association (collectively referred to as the "Association") to test New Jersey licensed pilots and registered apprentices for dangerous drugs and alcohol in the workplace and to report the verified positive results of any such test to the Board.

(b) It is the responsibility of each New Jersey licensed pilot and registered apprentice to comply with the requirements of this subchapter. The stringent requirements of this subchapter reflect the heavy responsibility borne by every New Jersey licensed pilot and registered apprentice, the safety-sensitive nature of the responsibilities of State-licensed pilots and apprentices and the difficulty of defining any level of dangerous drugs or alcohol which rules out the possibility of impairment.

(c) This subchapter prohibits, among other things, the use or possession of dangerous drugs by a New Jersey licensed pilot or registered apprentice whether on duty, subject to being called on duty or off duty. This subchapter also prohibits, among other things, the use of alcohol by a New Jersey licensed pilot or registered apprentice while both on duty or subject to being called on duty or during a four hour period prior to both being on duty or subject to being called on duty.

#### 7:61-3.2 Application, severability and notice of rules

(a) This subchapter applies to all New Jersey licensed pilots and registered apprentices regardless of classification.

(b) Chemical drug testing of New Jersey licensed pilots and registered apprentices must be conducted as required by this subchapter.

(c) Every licensed pilot or registered apprentice must receive a copy of these rules from the President of the Association and such receipt shall be documented.

(d) Each section of this subchapter is severable. In the event that in any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

#### 7:61-3.3 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Alcohol" means ethyl alcohol (ethanol). References to use or possession of alcohol include use of any beverage, mixture or preparation containing ethyl alcohol.

"Apprentice" means a person who is registered with the Commissioners pursuant to N.J.S.A. 12:8-10.

"Association" means the United New Jersey Sandy Hook Pilots' Benevolent Association or the United New Jersey Sandy Hook Pilots' Association.

"Board" or "Commissioners" means the New Jersey Board of Commissioners of Pilotage.

"BreathScan" means a portable breathalyzer with the trade name *BreathScan* found suitable by the National Highway Traffic Safety Administration as a first line test for breath alcohol concentration quantification or its equivalent.

"Chemical drug test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, for evidence of dangerous drug or alcohol use.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or state criminal drug statutes.

"Controlled substance" means a controlled substance listed in schedules I through V of 21 U.S.C. 812.

"Criminal drug statute" means any Federal or state criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance or drug.

"Dangerous drug" means a narcotic drug, controlled substance and/or marijuana as defined in 21 U.S.C. 802 including substances listed in Schedules I through V of 21 U.S.C. 812.

"Directly involved" means issuing or failing to issue an order, or taking an action or failing to take an action which is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing an incident or in exacerbating or aggravating the severity of an incident.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

"Fails a chemical drug test for drugs" means the test result is reported as positive for the presence of dangerous drugs or drug metabolites in an individual's system after a medical review officer's review.

"Hazardous substance" means a hazardous substance as defined by N.J.S.A. 58:10-23.11b.

"Intoxicated" as used throughout N.J.S.A. 12:8-1 et seq. means to have a positive alcohol test.

"Intoxicant" as used throughout 46 C.F.R. part 16 and 49 C.F.R. part 40 means any form of alcohol, dangerous drug, or combination thereof.

"Medical Review Officer" means a licensed physician designated by the Association to carry out the duties specified in this subchapter and who meets the qualifications of 49 CFR 40.33(b).

"On duty" means any time period during which a pilot or apprentice is engaged in pilotage operations or related duties.

"Pass a chemical drug test" means not to test positive for the presence of a dangerous drug or drug metabolites in an individual's system after a Medical Review Officer's review.

"Pilot" means a person duly licensed by the Commissioners as a pilot in New Jersey pursuant to N.J.S.A. 12:8-1 et seq.

"Pilot operations" means to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems. Operation includes:

1. Determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout;

2. Controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches; windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and

3. Mooring, anchoring, and line handling, loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and watertight integrity.

"Positive alcohol test" means a blood alcohol concentration of .04 percent or greater as measured by grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

"President of the Association" means the duly elected or appointed President of the Association.

"Subject to being called on duty" means any time period during which a pilot or apprentice is required to be available to be called "on duty" by the Association.

"User of dangerous drugs" means an individual who fails a test for dangerous drugs.

"Workplace" means any location at which pilotage or related duties are performed, including, but not limited to, vessels, motor vehicles, offices or government facilities.

#### 7:61-3.4 Prohibitions

(a) No pilot or apprentice shall:

1. Except as set forth in N.J.A.C. 7:61-3.5, use, possess, manufacture, distribute, sell or dispense dangerous drugs at any time whether on duty or off duty;

2. Consume alcohol either while on duty or while subject to being called on duty or during the four hour period prior to being on duty or subject to being called on duty;

3. Be intoxicated by having a blood alcohol concentration of .04 percent or greater either while on duty or while subject to being called on duty or during the four hour period prior to either being on duty or subject to being called on duty;

4. Fail to cooperate with any aspect of the specimen collection or chemical drug testing program set forth in this subchapter; or

5. Violate any other provision of this subchapter.

(b) Any pilot or apprentice who violates (a) above shall be subject to penalties, including suspension or license revocation, as set forth in this subchapter.

#### 7:61-3.5 Use of prescribed dangerous drugs

(a) Possession and/or use of dangerous drugs by a pilot or apprentice may be permitted if specifically prescribed by a licensed physician; provided that the dangerous drug is being used at the prescribed dosage and is in the original container clearly labeled with the Pilot or apprentice's name, the name of the drug, and the prescribing physician's Federal Drug Enforcement Administration number, and that prior to the possession or use by the pilot or apprentice of the dangerous drug:

1. The Medical Review Officer (MRO) is provided with a written, sworn certification by the pilot or apprentice that:

- i. The pilot or apprentice described his or her assigned duties to the prescribing physician before the drug was prescribed, and furnished the physician with a written official description of his or her duties provided by the Board, and that the prescribing physician advised the pilot or apprentice that use of the prescribed dangerous drug at the prescribed dosage is consistent with the safe performance of the pilot or apprentice's duties;

- ii. The drug is in its original container clearly labeled with the pilot or apprentice's name, the name of the drug, and the prescribing physician's Federal Drug Enforcement Administration number; and

- iii. The drug will be used at the dosage prescribed; and

2. The MRO has determined that use of the drug at the prescribed dosage is consistent with the safe performance of the pilot or apprentice's duties. The MRO shall inform the pilot or apprentice of his or her approval or disapproval of the use of the prescribed drug within 24 hours after receipt of the written, sworn certification of the pilot or apprentice.

#### 7:61-3.6 Implied consent; cooperation with collection and testing

(a) Pilots or apprentices required to be tested for dangerous drugs and/or alcohol pursuant to this subchapter shall provide complete, valid, undiluted, unadulterated breath, urine or blood samples as requested pursuant to this subchapter; shall supply all information requested by the laboratory; and shall otherwise cooperate with all collection and testing procedures implemented pursuant to this subchapter.

(b) If a pilot or apprentice fails to comply or cooperate with any collection or testing procedure pursuant to this subchapter, or with collection site personnel, the Association shall be notified. The

Association shall immediately inform the Board of any failure to comply or cooperate.

(c) As provided in this subchapter, failure to comply or cooperate with any collection or testing procedures implemented pursuant to this subchapter shall subject a pilot or apprentice to penalties, including suspension and/or license revocation, pursuant to N.J.S.A. 12:8-19.

#### 7:61-3.7 Pre-registration testing

(a) The Board shall not enter on its books nor shall the Association employ an individual as an apprentice unless the individual passes a chemical drug test for dangerous drugs.

(b) The specific date of such chemical drug tests for dangerous drugs shall be unannounced, but shall occur within the month prior to the registration. Notice of the specific date of chemical drug test for dangerous drugs shall be provided only so far in advance as is necessary to ensure the individual's presence at the time and place set for testing.

#### 7:61-3.8 Random testing

(a) The Association shall establish a program for the chemical drug testing of pilots and apprentices for dangerous drugs on a random basis.

(b) Random selection of pilots and apprentices means that every member of the population of pilots and apprentices has an equal chance of selection on a statistically valid basis. The testing frequency and selection process shall be such that pilot or apprentice's chance of selection continues to exist throughout a pilot's membership or an apprentice's employment. Therefore, pilots or apprentices randomly tested will remain in the pool of persons subject to testing even after the individual has been tested.

(c) A random test may be required on any day which a pilot or apprentice is subject to being called on duty or is on duty. Notice of a pilot or apprentice's selection for testing shall be provided only to the extent as is necessary to ensure the individual's presence at the time and place set for testing.

(d) The Association shall ensure that pilots and apprentices are tested on a random basis at an annual rate of not less than 50 percent of the total number of pilots and apprentices in the pool of Sandy Hook pilots and apprentices during each calendar year.

#### 7:61-3.9 Reasonable belief testing

(a) The Association shall require any pilot or apprentice who is reasonably believed to have used or be using a dangerous drug and alcohol to submit to a chemical drug test for dangerous drugs and alcohol.

(b) The Association's decision to test must be based on a reasonable and articulable belief that the pilot or apprentice has used or is using a dangerous drug or alcohol based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the pilot or apprentice by two pilots licensed by the State of New Jersey or licensed by the State of New York (Sandy Hook pilots).

(c) The Sandy Hook pilots who entertain the reasonable belief shall immediately notify the President or member of the Executive Committee of the Association. The President or member of the Executive Committee of the Association shall direct the pilot or apprentice to undergo a chemical drug test for dangerous drugs and alcohol as soon as practicable, but not more than eight hours after the Sandy Hook pilots notify the President or member of the Executive Committee of the Association of their reasonable belief.

(d) In all cases where an individual is required to be tested based upon a reasonable belief pursuant to (a) above, a written report shall be made, setting forth the facts upon which the reasonable belief is based, including the specific, contemporaneous physical, behavioral, or performance indicators of probable dangerous drug or alcohol use. The report shall be signed by the Sandy Hook pilots who had the reasonable belief, and by the President or member of the Executive Committee of the Association. This report shall be submitted to the Board within 72 hours of the administering of the chemical drug test for dangerous drugs and alcohol.

(e) Any pilot or apprentice required to undergo reasonable belief testing shall be prohibited from engaging in pilotage operations pending the outcome of the tests. The pilot or apprentice shall be returned to normal duties if the tests are negative.

#### 7:61-3.10 Post-incident testing

(a) A pilot or apprentice shall submit to a post-incident chemical drug test for dangerous drugs and alcohol if he or she is directly involved in an incident which results or is likely to result in:

1. Property damage exceeding \$10,000;
2. An injury to any person requiring professional medical treatment beyond first aid; or
3. A discharge of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

(b) The President or member of the Executive Committee of the Association shall direct any pilot or apprentice directly involved in the incident to report for the chemical drug test for dangerous drugs and alcohol as soon as practicable, but not more than eight hours after the incident.

(c) Any pilot or apprentice required to undergo post-incident testing shall be prohibited from engaging in pilotage operations pending of outcome of the tests. The pilot or apprentice shall be returned to normal duties if the tests are negative.

#### 7:61-3.11 Drug testing procedures

This subchapter incorporates by reference the Federal procedures for transportation workplace drug testing programs set forth at 49 CFR Part 40 regarding the preparation for drug testing, specimen collection and laboratory analysis. All drug testing required pursuant to this subchapter will be done by urinalysis. The Federal regulations must be consulted to determine the specific procedures which must be established and utilized by the Association in carrying out its drug testing program. Generally, the Federal regulations provide: that the privacy of the pilot or apprentice is maintained during specimen collection while ensuring the integrity of the specimen; that only laboratories using qualified personnel and which are certified by the Federal Department of Health and Human Services are to be used; and that laboratories are following quality assurance and quality control procedures.

1. Preparation for testing and specimen collection shall be conducted in accordance with 49 CFR 40.23 and 40.25.
2. The testing laboratory personnel shall meet all requirements at 49 CFR 40.27.
3. The testing laboratory analysis procedures shall be those required by 49 CFR 40.29.
4. The testing laboratory quality assurance and quality control procedures and standards shall be those required by 49 CFR 40.31.
5. The testing laboratory shall meet all requirements at 49 CFR 40.39.

#### 7:61-3.12 Alcohol testing procedures

(a) Chemical drug testing for alcohol shall be conducted by a two-step process. Initial screening shall be performed by using a portable breathalyzer, the *BreathScan* or its equivalent.

(b) The *BreathScan* units are manufactured to show a full color change at the 0.04% blood alcohol level (BAC) level.

(c) The *BreathScan* screening will be performed by personnel employed by the drug testing facility with which the Association contracts pursuant to N.J.A.C. 7:61-3.18.

(d) The testing by the *BreathScan* units and maintenance of the *BreathScan* units will be conducted according to the manufacturer's instructions included with each unit.

(e) A color change in the testing unit indicating a BAC level above or at the 0.04 percent level will require follow-up chemical drug testing in order to confirm the precise alcohol level. The President or a member of the Executive Committee of the Association shall direct any pilot or apprentice screening positive to report for a blood test for alcohol as soon as practicable, but not more than one hour after the initial screening. The blood sample will be collected, tested and reported under chain of custody procedures by qualified, trained

personnel employed by the drug testing facility with which the Association contracts pursuant to N.J.A.C. 7:61-3.18.

(f) A pilot or apprentice will be deemed to have tested positive for alcohol if the confirming blood test shows a level of 0.04 percent or above for grams of alcohol per 100 milliliters of blood.

**7:61-3.13 Medical Review Officer—verification and reporting of positive test results**

(a) The Association shall designate a Medical Review Officer (MRO) meeting the qualifications of 49 CFR 40.27. The MRO shall review all chemical drug test results for dangerous drugs or alcohol reported by the laboratory as positive and shall verify that the laboratory reports of the results are reasonable and shall examine alternate medical explanations for positive test results.

(b) The MRO shall promptly contact all individuals with positive test results and shall, prior to reporting the test as positive to the Association and the Board, provide the individual with an opportunity to discuss the test results.

(c) If the MRO determines that the test is false-positive or if the MRO determines that the test results are scientifically insufficient for further action, the test shall be reported as negative.

(d) The MRO shall report all verified positive test results and indicate the dangerous drugs and/or alcohol for which there was a verified positive test to the President of the Association within 48 hours of their verification by the MRO.

(e) The President of the Association shall, within 48 hours after receipt of the MRO's report, provide a written report of all verified positive test results and indicate the drugs and/or alcohol for which there was a verified positive test to the Board.

**7:61-3.14 Protection of employee records**

(a) The laboratory performing chemical drug testing pursuant to this subchapter shall report the test results only to the MRO.

(b) The MRO shall maintain the confidentiality of the chemical drug test results and report only verified positive test results and the drugs and/or alcohol for which there was a verified positive test to the Association and/or the Board.

(c) The Association and the Board shall maintain the confidentiality of the chemical drug test results and release information regarding verified positive tests only in the context of a hearing before the Board or in a lawsuit, grievance or other proceeding arising from a verified positive chemical drug test.

(d) The laboratory shall disclose information related to a positive chemical drug test of an individual only to the individual, the Association, the Board or decisionmaker in a lawsuit, grievance, or other proceeding arising from a verified positive chemical drug test.

(e) Any pilot or apprentice who is the subject of a chemical drug test conducted under this subchapter shall, upon written request, have access to any records relating to his or her chemical drug test.

**7:61-3.15 Notice to Board of criminal or Coast Guard charges and convictions**

(a) All apprentices and pilots shall notify the President of the Association in writing within 24 hours or prior to reporting on duty, whichever event occurs first, after being formally charged with a violation and/or being convicted under:

1. Any Federal or state criminal drug statute;
2. Any United States Coast Guard regulation pertaining to the use or possession of drugs or alcohol; or
3. Any motor vehicle statute for driving while under the influence or driving while intoxicated.

(b) Within 48 hours after receipt of written notification of conviction, the Association shall provide written notification of such conviction to the Board.

(c) The Association shall require any pilot or apprentice who tests positive for dangerous drugs or alcohol under a United States Coast Guard regulation to submit to a chemical drug test for dangerous drugs and/or alcohol within 48 hours of such positive test and to be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol for a period as determined by the Board of up to 24 months.

**7:61-3.16 Suspension or revocation of license/appointment**

(a) Any pilot who is intoxicated while on duty or subject to being called on duty shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing:

1. For the first offense:
  - i. Forfeit the pilotage fee for the pilotage operations performed while intoxicated;
  - ii. Be suspended from duty for six months; and
  - iii. Pay a penalty of \$50.00; and
2. For the second offense, have his or her license permanently revoked.

(b) Any apprentice who is intoxicated while on duty or subject to being called on duty shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her registration permanently revoked.

(c) Any pilot or apprentice who fails to comply or cooperate with specimen collection and/or chemical drug testing; or who tests positive on a chemical drug test required pursuant to this subchapter or a chemical drug test required pursuant to the Federal regulations, 46 C.F.R. part 16; or who is convicted under a Federal or state criminal drug statute or any state motor vehicle statute for driving while under the influence or driving while intoxicated; or who violates any other provision of the subchapter, shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her license/registration permanently revoked unless there are extenuating circumstances which, in the discretion of the Board, justify only the suspension of his or her license/registration.

(d) Any pilot or apprentice who was prohibited from engaging in pilotage operations pending a hearing before the Board and who is not suspended or who does not have his or her license/registration revoked following his or her hearing before the Board shall be returned to normal duties and shall receive retroactive pay for the period during which he or she was prohibited from engaging in pilotage operations.

(e) Any pilot or apprentice who is suspended from duty pursuant to (a), (b) and/or (c) above must pass a chemical drug test for dangerous drugs and alcohol prior to reinstatement. The specific date of such test shall be unannounced, but shall occur within the month prior to reinstatement. Notice of the specific date of such test shall be provided only so far in advance as is necessary to ensure the individual's presence at the time and place set for testing. In addition, the pilot or apprentice shall be subject to increased, unannounced chemical drug testing for dangerous drugs and alcohol at the pilot's or apprentice's expense for a period as determined by the MRO of up to 60 months.

**7:61-3.17 Hearings and appeals**

(a) Hearings conducted for violations of this subchapter and the imposition of penalties shall be conducted before the Board or if the Board so directs shall be referred to the Office of Administrative Law pursuant to the procedures at N.J.A.C. 1:1.

(b) Notice of hearing, time and place of hearing, alleged violation(s) and possible penalties to be imposed shall be in writing. This written notice of hearing must be received by the alleged violator, either by personal service or by certified mail sent to his or her usual place of abode, at least 15 calendar days prior to the date of the hearing.

**7:61-3.18 Responsibilities of the Association**

(a) After consultation with and approval by the Board, the Association shall promptly enter into an agreement(s) or contract(s) with a testing facility and an MRO for the performance of the tests and duties required by this subchapter.

(b) It shall be the responsibility of the Association, except as otherwise provided in this subchapter, to pay for the tests required by this subchapter and the fees of the MRO.

(c) It shall be the responsibility of the Association to direct the pilots and apprentices to present themselves at the time and place for the test(s) required by this subchapter.

(d) The contract(s) or agreement(s) between the Association and the laboratory selected to do the testing and the MRO shall provide

that the laboratory and MRO shall cooperate with the Board and shall comply with the requirements of this subchapter including maintaining the confidentiality of test results, providing reports, providing documents and providing competent witnesses for hearings.

(e) This subchapter shall not in any way limit the authority of the Board to suspend or revoke the license of any pilot or terminate any apprenticeship as authorized by any other regulations of the Board or the laws of the State of New Jersey.

(f) The Association shall submit a copy of its proposed procedures implementing this subchapter and copies of the proposed agreement(s) or contract(s) between the Association and the organization designated to conduct the testing and MRO to the Board for review and approval.

(g) This subchapter shall not in any way preclude other drug or alcohol testing required or authorized by any state or Federal statute or regulation.

(h) At each regular meeting of the Board, the President of the Association shall report the number of random chemical drug tests performed pursuant to the requirements of this subchapter, a summary of the number of verified positive tests and negative tests and the dangerous drugs which have been identified in the verified positive tests.

(i) In the event the President of the Association is unable to perform the duties imposed upon him or her by this subchapter they may be performed by a member of the Executive Committee of the Association.

#### 7:61-3.19 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed in (c) below shall be deemed to incorporate such document or source by reference.

(b) Any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter will not be incorporated in this subchapter or become operative in New Jersey unless the Board proposes an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The following documents and sources are incorporated by reference within this subchapter:

1. United States Code, Title 21, Parts 802 and 812;
2. Code of Federal Regulations, Title 21, Parts 1301-1316; and
3. Code of Federal Regulations, Title 49, Part 40, Procedures for Transportation Workplace Drug Testing Programs, Sections 40.23, 40.25, 40.27, 40.29, 40.31 and 40.39.

(a)

## POLICY AND PLANNING/OFFICE OF ENERGY

### Control and Prohibition of Air Pollution from Oxides of Nitrogen

#### Proposed New Rules: N.J.A.C. 7:27-19

#### Proposed Amendments: N.J.A.C. 7:27A-3.5 and 3.10

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular N.J.S.A. 26:2C-9(c) and 19.

DEPE Docket Number: 04-93-01.

Proposal Number: PRN 1993-76.

Public hearings concerning this proposal will be held at 10:00 A.M. on the following dates and locations:

Thursday, March 18, 1993  
Rowan College of New Jersey  
Student Center, 2nd Floor  
201 Mullica Hill Rd.  
Glassboro, New Jersey

Friday, March 19, 1993  
Board of Regulatory Commissioners  
Board Hearing Room, 10th Floor  
Two Gateway Center  
Newark, New Jersey

Submit written comments by March 25, 1993 to:

Janis E. Hoagland, Esq.  
Office of Legal Affairs  
Department of Environmental Protection and Energy  
CN 402  
Trenton, New Jersey 08625-0402

The proposed amendments and new rules will become operative 60 days after adoption (see N.J.S.A. 26:2C-8).

The agency proposal follows:

#### Summary

The Department of Environmental Protection and Energy (Department) is proposing new rules establishing standards and requirements for equipment and source operations which release oxides of nitrogen (NO<sub>x</sub>) to the atmosphere. The Department is also proposing related amendments to N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings (the Penalty Code).

The primary purpose of the proposed new rules and amendments is to reduce the formation of ground-level ozone. In the presence of sunlight, NO<sub>x</sub>, volatile organic compounds (VOC) and other compounds in the ambient air react to form ozone. Ozone is a known respiratory irritant and may significantly reduce the yield of important food crops. Ozone also causes degradation of paints, plastics, textiles and rubber. A detailed description of the public health problems and damage to natural resources and property associated with increased levels of ozone is set forth in the Summary and Social Impact statement for the proposed new rules establishing a low emission vehicle program. 24 N.J.R. 1315, 1316, 1320 (April 6, 1992).

The proposed new rules and amendments are in response to the requirements of the Federal Clean Air Act, 42 U.S.C. §7401 et seq. (Act), as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 (1990 CAAA). Pursuant to the Act, the United States Environmental Protection Agency (EPA) has established a National Ambient Air Quality Standard (NAAQS) for ozone. 42 U.S.C. §7409(a)(1). The Act requires any state in which the ambient air quality fails to achieve the NAAQS to submit a State Implementation Plan (SIP) to EPA. 42 U.S.C. §7410. The SIP provides for the state to establish enforceable emission limitations and other control measures which would enable the state to achieve the standard.

New Jersey is subject to this requirement because it has not attained the NAAQS for ozone. EPA has designated 18 of the State's 21 counties as being in "severe" nonattainment for ozone, based upon ozone levels more than 50 percent above the NAAQS in those areas.

The 1990 CAAA further directs states in which severe nonattainment areas are located to revise their SIPs to require major stationary sources of NO<sub>x</sub> to implement reasonably available control technology (RACT) to reduce emissions. P.L. 101-549, §182(f). The 1990 CAAA requires this implementation as expeditiously as practicable, but no later than May 31, 1995. See §§182(b)(2), (d) and (f)(1). The proposed amendments and new rules are intended to satisfy these mandates of the 1990 CAAA.

The major stationary sources of NO<sub>x</sub> to be subject to the proposed amendments and new rules include utility, industrial and commercial boilers; stationary gas turbines; internal combustion engines; and other types of combustion equipment. Any equipment or source operation which is subject to a NO<sub>x</sub> emission limitation set forth in the rule will be required either to control its NO<sub>x</sub> emission rate to a level no greater than that specified in the rules, or to comply instead with alternative requirements which are described in the summaries of the relevant provisions below.

In developing the proposed amendments and new rules, the Department held a workshop, to which the public (including representatives of the regulated communities described above) was invited, and dis-

tributed a conceptual draft of the proposal to the workshop attendees. In addition, the Department invited persons attending the workshop to join ongoing working groups. One working group met five times to discuss the control strategies relevant to utility boilers; based on those discussions, the Department added to the rule an averaging concept for electric generating utilities and owners and operators of other sources subject to subchapter 19 (discussed in more detail below). In addition, the Department met twice with representatives of the Glass Packaging Institute; these representatives supplied information which the Department considered in establishing emission limits for glass furnaces, and the operative dates for those limits. The Department also met twice with representatives of the New Jersey Asphalt Paving Association, who supplied the Department with the results of NO<sub>x</sub> source emission testing conducted by members of the Association.

Because New Jersey's persistent ozone air quality problem results in part from NO<sub>x</sub> emissions transported into the State from other states, and vice versa, the Department also has worked closely with the regional air pollution control associations to which it belongs in order to develop a consistent NO<sub>x</sub> reduction strategy for ozone attainment in the northeast corridor. These associations include the Northeast States for Coordinated Air Use Management (NESCAUM), the Mid-Atlantic Region Air Management Association (MARAMA) and the Ozone Transport Commission (OTC). The state has also been working with the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) in formulating a national strategy regarding NO<sub>x</sub> RACT for utility boilers. The proposed rule is consistent with the recommendations of all of these groups.

The specific provisions of the proposed new rules at N.J.A.C. 7:27-19 (subchapter 19) are discussed in more detail below:

#### N.J.A.C. 7:27-19.1 Definitions

N.J.A.C. 7:27-19.1 defines terms used in subchapter 19.

The terms "carbon monoxide," "oxides of nitrogen," "nitrogen oxide" and "nitrogen dioxide" are defined to specify the air contaminants regulated under subchapter 19. The definitions set forth the common chemical meaning of these terms.

The proposed new rules define "coal," which is used for fuel in several types of equipment and source operations regulated under subchapter 19. The definition is stated in terms of the various types of coal, which are also defined. These types include "anthracite coal," "bituminous coal," "coke," "lignite," "nonbanded coal" and "subbituminous coal." The definitions are consistent with those used by the American Society for Testing and Materials, which issues specifications for the different types of coals.

The following terms used in subchapter 19 have the same definitions used elsewhere in N.J.A.C. 7:27: "air contaminant," "alter," "anthracite coal," "ASTM," "British thermal unit (BTU)," "certificate," "CFR," "control apparatus," "delivery vessel," "Department," "distillates of air," "EPA," "equipment," "facility," "federally enforceable," "liquid particles," "manufacturing process," "maximum allowable emission rate," "NESHAP," "NSPS," "operating certificate," "organic substance," "particles," "permit," "person," "potential to emit," "sampling," "solid particles," "source emission testing," "source operation," "stack or chimney," "standard conditions," "testing" and "use."

The following terms used in subchapter 19 are defined by cross-reference to other rule provisions: "ambient air quality standard," "alteration," and "National Ambient Air Quality Standard."

The other definitions in N.J.A.C. 7:27-19.1 are described below, in the discussion of the substantive rule provision which uses the defined term in question.

#### N.J.A.C. 7:27-19.2 Scope, purpose and applicability

As noted above, the purpose of the proposed new rules is to require major stationary sources of NO<sub>x</sub> to implement reasonably available control technology (RACT), as required by the 1990 CAAA. EPA has previously defined RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility. 44 Fed. Reg. 53762 (September 17, 1979).

In considering whether a particular control technology is economically feasible, the Department has not established a specific cost for a given amount of NO<sub>x</sub> emission reductions as a limit to RACT. Such a rigid test for RACT is inappropriate for several reasons. First, a minor difference in the costs of using the same technology in two different

facilities or in the costs of two different technologies could be the basis for completely different results when the test is applied to the two facilities or two technologies. There would be no rational basis for the difference in these results. Second, the test would be applied to cost estimates; the inevitable variation in estimates could again bring results with no rational basis. Third, the use of the word "reasonably" in the term means that it is intended to yield fair and appropriate results tailored to specific circumstances and the results to be achieved. A rigid test would not serve this purpose.

For these reasons, the proposed new rules apply the concept of RACT in a more flexible manner. In determining whether a given control technology represents RACT, at least the following factors are relevant: the cost of the technology; the cost of less expensive technology which offers lesser reductions in NO<sub>x</sub> emissions; the size of the improved emission reduction which can be attained using more expensive technology; the nature and extent of the environmental benefits of that improved emission reduction; and the costs which members of a particular industry generally are incurring for control of NO<sub>x</sub> emissions. If the added cost of a more expensive control technology is disproportionate to the improvement in NO<sub>x</sub> emissions which will result from its use, the more expensive technology is unlikely to be considered RACT. If the cost of a control technology for equipment or source operations at a particular facility is disproportionate to the NO<sub>x</sub> emission control costs incurred for similar equipment or source operations at competing facilities, the technology again is unlikely to be considered RACT.

As noted above, the RACT requirements of the 1990 CAAA apply to major stationary sources of NO<sub>x</sub>. The 1990 CAAA defines a major stationary source of NO<sub>x</sub> to include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of NO<sub>x</sub>. See §§182(d) and (f) of the 1990 CAAA. The definition of "major NO<sub>x</sub> facility" in N.J.A.C. 7:27-19.1 is consistent with the statutory definition.

Under N.J.A.C. 7:27-19.2, all major NO<sub>x</sub> facilities are subject to subchapter 19. This section also lists specific types of equipment and source operations which are subject to subchapter 19, based upon some operating parameter such as maximum heat input rates, production capacity or horsepower. Generally, it is preferable to base applicability upon an operating parameter (instead of basing it directly upon potential emissions) if the operating parameter generally correlates with potential emissions. Since the owner or operator or equipment of source operation is much more likely to know its operating parameters than its potential emissions, the use of this standard will enable the owner or operator to determine more reliably whether subchapter 19 applies.

The Department has determined that each type of equipment or source operation listed in N.J.A.C. 7:27-19.2 is located at one or more stationary sources of NO<sub>x</sub> in New Jersey. Except for asphalt plants (discussed below), the Department has developed specific applicability requirements based on the minimum equipment size for which it is reasonable to apply NO<sub>x</sub> control measures. For different types of equipment, the rule expresses the threshold in different units of measurement (such as BTUs per hour or horsepower), reflecting the standard way in which a source of each type is sized when purchased.

For asphalt plants, the Department has not developed a specific applicability level based upon equipment size, because it is unable to determine that there is a minimum equipment size for which it is reasonable to apply NO<sub>x</sub> control measures. Therefore, the applicability of subchapter 19 to this type of facility is based solely upon whether the potential emissions of NO<sub>x</sub> from the source equal or exceed 25 tons per year.

The Department notes that even if no equipment or source operation at a particular facility exceeds the threshold operating parameter applicable under N.J.A.C. 7:27-19.2(b), the facility is nonetheless subject to subchapter 19 if its potential emissions of NO<sub>x</sub> equal or exceed 25 tons per year. The facility would be considered a "major NO<sub>x</sub> facility," and subject to regulation pursuant to N.J.A.C. 7:27-19.2(c).

The types of equipment and source operations subject to subchapter 19 (utility boilers, non-utility boilers, stationary gas turbines, stationary internal combustion engines, rotary dryers in asphalt plants, glass manufacturing furnaces, and other major NO<sub>x</sub> facilities) are described below in the summaries of the provisions applicable to each type of equipment or source operation.

The Department recognizes the possibility that equipment or source operations which are larger than the minimum sizes listed in N.J.A.C. 7:27-19.2(b) will not have the potential to emit 25 tons of NO<sub>x</sub> per year. Under N.J.A.C. 7:27-19.2(f), the owner or operator of that equipment

or source operation may apply to the Department for an exemption from regulation under subchapter 19. The Department will approve the exemption if the facility containing the equipment or source operation has a potential to emit less than 25 tons of NO<sub>x</sub> per year, and if its potential to emit NO<sub>x</sub> on any day from May 15 through September 15 is less than 137 pounds per day.

The proposed new rules require the owner or operator to apply for this exemption, rather than exempting the eligible sources automatically without any affirmative act by the owner or operator, in the interest of providing certainty that a source is or is not subject to subchapter 19. If the exemption were available automatically, the owner or operator of an item of equipment or source operation larger than the minimum size listed in N.J.A.C. 7:27-19.2(b) could not be certain that the equipment or source operation was exempt. In addition, the Department would not be aware that the owner or operator believed that the equipment or source operation was exempt. As a result, the Department could undertake enforcement action for violations of subchapter 19, and the owner or operator would have to establish the exemption in defending against the enforcement action. In contrast, under the proposed new rules the Department will take definite action to exempt an eligible item of equipment or source operation. Both the owner or operator and the Department will then be certain that there is no need for the source to comply with subchapter 19, and the unnecessary enforcement action would not arise.

The Department believes that it will be able to approve or disapprove most exemption requests through a relatively simple procedure. When a permit and operating certificate have previously been issued for the equipment or source operation in question, the exemption request normally will involve nothing more than a short form to which the permit and certificate would be attached. In other cases, the Department normally will need to inspect the equipment or source operation in question.

The daily limit from May 15 through September 15 is necessary because ozone levels are more likely to be elevated during that time. A source with the potential to emit 137 pounds of NO<sub>x</sub> per day were operated full-time, it would have the potential to emit 25 tons of NO<sub>x</sub> per year. However, that source's permit or operating certificate may restrict its operating time so that its potential emissions of NO<sub>x</sub> over the year are held below 25 tons. Without the daily limit, the source would be eligible for exemption even if its potential NO<sub>x</sub> emissions during the ozone season were no less than a source which could not be exempted.

N.J.A.C. 7:27-19.2(d) exempts certain emergency generators from regulation under subchapter 19. An "emergency generator" is used to provide mechanical or electrical power in an emergency which has rendered a facility's primary power source inoperable. However, if the equipment continues to operate after the primary power source becomes operable again, or after it should have become operable again with reasonable effort by the owner or operator of the equipment, then that equipment would no longer be considered an "emergency generator."

The proposed new rules exempt emergency generators which are subject to restrictions prohibiting them from operating for more than 500 hours annually, and which do not have the potential to emit 25 tons of NO<sub>x</sub> during that annual period of operations. Requiring installation of control technologies which would be considered RACT for a full-time generator would force operators of emergency generators to incur the same cost for a much lesser reduction of NO<sub>x</sub> emissions. In addition, the Department has determined that the infrequent use of emergency generators means that exempting them from subchapter 19 will not jeopardize achievement of the ozone NAAQS. The Department notes that the proposed new rules do not require the owner or operator to take any action to obtain the benefit of the exemption for the emergency generator. In contrast, to obtain the exemption under N.J.A.C. 7:27-19.2(f) discussed above, the owner or operator must first receive the Department's approval of an exemption application.

This exemption does not apply to generators which are used in non-emergency circumstances such as periods of peak demand for electricity. Peak demand for electricity generally occurs on hot summer days when air conditioning use is at a peak; on those same days, atmospheric conditions are conducive to the formation of ground-level ozone. Therefore, exempting these non-emergency generators would jeopardize achievement of the ozone NAAQS. These non-emergency generators are subject to subchapter 19 if they meet the size-based applicability criteria of N.J.A.C. 7:27-19.2(b) and are not eligible for exemption under N.J.A.C. 7:27-19.2(f), even though their limited periods of operation are unlikely to produce emissions of 25 tons of NO<sub>x</sub> over the entire year.

Section 182(f) of the 1990 CAAA provides that the RACT requirements for major stationary sources of NO<sub>x</sub> do not apply "in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a [SIP or SIP revision]) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned." EPA has not yet provided guidance regarding the application of this provision. To comply with the 1990 CAAA, the Department has included a corresponding provision in the proposed new rules at N.J.A.C. 7:27-19.2(e). The Department will amend the rule in accordance with the guidance which EPA provides in the future. Based upon regional air quality modelling performed to date, it is unlikely that this provision of the 1990 CAAA will be relevant to New Jersey.

#### N.J.A.C. 7:27-19.3 General provisions

N.J.A.C. 7:27-19.3 contains general provisions regarding joint and several liability, compliance dates, and interpretation.

N.J.A.C. 7:27-19.3(a) states that each owner and each operator of any equipment or source operation subject to subchapter 19 is responsible for ensuring that the source is operated in compliance with subchapter 19. Multiple owners and operators are jointly and severally liable for penalties assessed for violations of subchapter 19.

As required by the 1990 CAAA, subchapter 19 subjects equipment and source operations to RACT requirements which become operative on May 31, 1995. If compliance with RACT requirements entails meeting an emission limit under subchapter 19, N.J.A.C. 7:27-19.3(b) establishes May 31, 1995 as the operative date for the emission limit. Certain glass furnaces and utility boilers become subject to RACT requirements on May 31, 1995 which are not expressed as emission limits. Those sources may become subject to numerical emission limits under subchapter 19 at a later date. The requirements for utility boilers which are to be shut down or repowered by May 15, 1999 are discussed in the summary of N.J.A.C. 7:27-19.4 below; the requirements for glass furnaces are discussed in the summary of N.J.A.C. 7:27-19.10 below.

The requirements which become applicable to these utility boilers and glass furnaces by May 31, 1995 represent RACT. Those requirements take into account the limited remaining useful life of the equipment, which will limit the total amount of NO<sub>x</sub> which can be removed over the life of any control measure which could be installed. As a result, if more stringent measures were required by May 31, 1995, the cost of the control measure per ton of NO<sub>x</sub> removed would be too high to be considered RACT. The requirements which are applicable to a utility boiler which has been repowered or a glass furnace which has been rebricked represent RACT for that class of boiler or furnace. This determination reflects the likelihood that the useful life of the equipment following that date will be long enough to lower the cost per ton of NO<sub>x</sub> removed.

N.J.A.C. 7:27-19.3(c) responds to an issue raised by electric generating utilities, concerning the relationship between the RACT requirements necessary for compliance with subchapter 19, and the "state of the art" requirements of the air pollution control permitting rules at N.J.A.C. 7:27-8. The existing permit rules at N.J.A.C. 7:27-8.8(d) require that any alteration to equipment or control apparatus must incorporate "current advances in the art of air pollution control developed for the kind and amount of air contaminant emitted." Utilities participating in the working group questioned how this requirement would apply to alterations made pursuant to the proposed new rules.

The Department's position is that this "state of the art" requirement, as applied to alterations undertaken to comply with the proposed new rule, generally requires only that the system chosen to comply with the new emission limits be the best type of that system which is available. For example, if a utility installs low-NO<sub>x</sub> burners and over-fire air to satisfy the emission limits in the proposed new rule, the "state of the art" requirement will be satisfied if the low-NO<sub>x</sub> burners and over-fire air design and operation represent the state of the art for that type of boiler. The utility would not be required to install an SCR system to be considered "state of the art."

However, if the alteration were so substantial that it would be considered a "reconstruction" of the equipment or source operation (defined, as in the EPA regulations at 40 CFR 60.15(b), to mean a replacement of components at a cost which is at least 50 percent of the replacement cost of the entire item of equipment or source operation), or if NO<sub>x</sub> control measures were being installed in a new source, the most advanced type of control technology would be required for compliance with N.J.A.C. 7:27-8.8(d). This distinction between new sources

and "reconstructions" versus less substantial alterations is necessary because some types of control measures may be unsuitable for installation in an existing source which is undergoing a minor alteration. There is substantial latitude in designing a new source or a reconstruction of an existing source so that it can accommodate a particular type of control measure. In contrast, an existing source undergoing a less substantial alteration has limited space available to accommodate the installation of control measures; in addition, the nature of its operations may make particular control measures unsuitable or ineffective. The interpretation of the state-of-the-art requirement for less substantial alterations takes those constraints into account.

This position is stated in N.J.A.C. 7:27-19.3(c). However, the Department notes that if an alteration triggers a requirement for compliance with an EPA New Source Performance Standard (NSPS) or Prevention of Significant Deterioration (PSD) rule, those requirements would be unaffected by N.J.A.C. 7:27-19.3(c). In addition, a reduction in NO<sub>x</sub> emissions may lead to an increase in emissions of another pollutant which could trigger the requirements of the emission offset rules at N.J.A.C. 7:27-18 (see 24 N.J.R. 3459(a), October 5, 1992); those rules may require the owner or operator to demonstrate that emissions of the other pollutant will be controlled to the degree which represents the lowest achievable emission rate. That requirement also would be unaffected by N.J.A.C. 7:27-19.3(c).

In many cases, compliance with the proposed new rules will require the construction or installation of equipment and control apparatus. Owners and operators which must modify existing equipment or control apparatus or install new equipment or control apparatus to comply with the proposed new rules must apply for the necessary permits within three months after the operative date of the proposed new rules.

#### N.J.A.C. 7:27-19.4 Utility boilers

##### General standards

N.J.A.C. 7:27-19.4 establishes maximum allowable NO<sub>x</sub> emission rates for utility boilers. A "utility boiler" is a furnace, boiler or other device which combusts "commercial fuel" to generate steam for the production of electricity. Non-commercial fuels generally qualify as "solid waste" under N.J.A.C. 7:26-1.6, or as "hazardous waste" under N.J.A.C. 7:26-8. The use of commercial fuels therefore generally distinguishes a utility boiler from a solid waste or hazardous waste incinerator discussed under N.J.A.C. 7:27-19.9, except in those limited circumstances in which the Department's hazardous waste rules allow combustion of hazardous waste in a boiler.

All utility boilers are subject to the proposed new rules, without regard to their potential to emit NO<sub>x</sub>. The Department has determined that those utility boilers currently in operation but with the potential to emit less than 25 tons of NO<sub>x</sub> per year are used to handle peak electrical demand during the summer months. During that time, atmospheric conditions are most conducive to the formation of ground-level ozone. Accordingly, emissions from those utility boilers with a lesser annual potential to emit NO<sub>x</sub> would jeopardize the achievement of the NAAQS for ozone if they were excluded from regulation under subchapter 19.

For the reasons discussed below, the rate of NO<sub>x</sub> emissions from a utility boiler depends upon the temperature at which combustion takes place and the amount of nitrogen in the fuel. In addition, the type of firing configuration used in the boiler limits the types of air pollution control measures which can be used in the boiler. Consequently, different kinds of boilers and different kinds of fuels cause different amounts of NO<sub>x</sub> emissions. The proposed new rules therefore establish specific maximum emission rates for the various configurations of boiler types and various types of fuels.

The proposed new rules distinguish among the following configurations of boilers: tangentially-fired boilers, in which the burners are mounted at the corners of the furnace chamber; face-fired boilers, in which the burners are mounted on one or more walls of the furnace chamber; and cyclone-fired boilers, in which fuel is combusted in a horizontal cylinder before combustion gases are released into the boiler. For each of these configurations, the proposed new rules establish emission standards based upon the fuel used in the boiler (coal, oil and/or gas, and gas only), and whether the boiler is a "wet bottom" or "dry bottom" type. In a dry-bottom utility boiler, ash is removed in a dry state. In a wet-bottom utility boiler, the ash is removed in a molten state.

Wet-bottom boilers are usually operated at higher temperatures than dry-bottom boilers, in order to maintain the ash in a molten state. Consequently, wet-bottom boilers usually have higher potential NO<sub>x</sub> emissions than dry-bottom boilers.

The configuration of the boiler and the fuel it combusts affect emissions in several ways. Generally, as the temperature at which combustion takes place increases, formation of "thermal NO<sub>x</sub>" (NO<sub>x</sub> formed when nitrogen in the air oxidizes at high temperatures) increases as well. Therefore, some combustion strategies for controlling thermal NO<sub>x</sub> are based on lowering the flame temperature. Also, as the nitrogen content of the fuel increases, the amount of "fuel NO<sub>x</sub>" (NO<sub>x</sub> formed when nitrogen contained in the fuel oxidizes) increases as well. Therefore, control of fuel NO<sub>x</sub> depends upon the use of fuel which has a lower nitrogen content.

Burners which can significantly reduce NO<sub>x</sub> emissions from boilers are currently available for dry-bottom face-fired and tangentially-fired boilers. These "low-NO<sub>x</sub> burners" are normally used in conjunction with "overfire air" (OFA), in which ports installed in the boiler above the top row of burners inject air into the boiler to produce staged combustion which reduces NO<sub>x</sub> emissions. The cost of low-NO<sub>x</sub> burners and OFA ranges from approximately \$570.00 to \$1,500 per ton of NO<sub>x</sub> emissions removed, according to "Evaluation and Costing of NO<sub>x</sub> Controls for Existing Utility Boilers in the NESCAUM Region," a report published by the EPA in conjunction with NESCAUM and discussed in more detail below. The Department has determined that this technology represents RACT, and it is the basis for most of the emission limits in the proposed new rules.

However, the physical operating characteristics of cyclone-fired and other wet-bottom boilers make the currently available low-NO<sub>x</sub> burners unsuitable for use in those boilers. Therefore, in addition to establishing different emission limitations for those boilers, the proposed new rules include provisions specifically tailored to those boilers. These provisions are discussed in more detail below.

The emission rate limitations in N.J.A.C. 7:27-19.4(a) are based upon "Evaluation and Costing of NO<sub>x</sub> Controls for Existing Utility Boilers in the NESCAUM Region," a report published by the EPA in conjunction with NESCAUM. In preparing the report, EPA distributed drafts to a number of reviewers, including utilities in the NESCAUM region, boiler and burner manufacturers, representatives of state governments, and other individuals who have been involved in NO<sub>x</sub> control issues in the NESCAUM region. The final report, dated December, 1992, reflects comments and suggestions made by those reviewers.

The report evaluates commercially available NO<sub>x</sub> control technologies, the emission reductions which each technology has achieved in practice, its technical feasibility, its cost and its cost effectiveness. Based upon that evaluation, the report describes a range of emissions achievable using each technology.

In establishing the emission limits for subchapter 19, the Department determined the averages of those ranges, and refined the averages based on information from participants in the utility boiler working group, consultants, NESCAUM, MARAMA and STAPPA. The emission limits specified in subchapter 19 are similar to the emission rates recommended by these groups, but have been tailored to the specific utility boilers which are currently operating in New Jersey. In addition, NESCAUM based its recommendations upon a draft of the EPA/NESCAUM report; since the date of NESCAUM's recommendations, the estimates of average attainable emissions in the report have changed slightly. The emission limits in the proposed new rules are based upon the revised estimates in the final report.

The Department based the emission limits in the proposed new rules upon the average achievable emission limits, for several reasons. If the Department had based the emission limits upon the bottom of the range of emissions in the EPA report, most of the boilers affected would not be able to comply with the limits while using RACT. If the emission limits were based upon the top of the range, NO<sub>x</sub> emissions from many of the boilers affected would be higher than what is achievable using RACT. In basing the emission limits on the average of the range, the Department recognizes that some boilers will be unable to meet the limits. However, those boilers will be able to comply with subchapter 19 under the provisions for averaging (discussed in the summary of N.J.A.C. 7:27-19.6 below) or for alternative maximum allowable emission rates (discussed in the summary of N.J.A.C. 7:27-19.13 below), without having to install unreasonably expensive control technologies.

##### Seasonal combustion of natural gas

As noted above, coal-fired, wet-bottom utility boilers are unable to use low-NO<sub>x</sub> burners to reduce NO<sub>x</sub> emissions. As an optional alternative, N.J.A.C. 7:27-19.4(b) provides that these boilers using tangential or face firing methods can be subjected to different emission limits if they combust natural gas seasonally. Utilities participating in the rule develop-

ment working groups had recommended this approach; the Department agrees that it is a viable strategy for obtaining significant NO<sub>x</sub> reductions from these types of boilers. During the ozone season, those boilers will achieve NO<sub>x</sub> emission reductions equal to or greater than those achieved by coal-fired boilers using low-NO<sub>x</sub> burners and overfire air.

To be eligible for alternative emission limits through seasonal combustion of natural gas, the owner or operator of the boiler must first obtain the Department's approval. The procedures and standards for obtaining approval are set forth in N.J.A.C. 7:27-19.14, and are discussed in the summary of that section below.

From May 15 through September 15 of each year (when ozone levels are most likely to be elevated), the boiler would be required to combust only natural gas and emit no more than one pound of NO<sub>x</sub> per million BTUs generated, on a 24-hour average. This represents a NO<sub>x</sub> emission reduction of approximately 50 percent compared to uncontrolled emissions. This limit is the same as the limit under N.J.A.C. 7:27-19.4(a). However, the boiler would not be subject to that limit year-round; instead, the average emissions over the entire calendar year would be restricted to 1.5 pounds of NO<sub>x</sub> per million BTUs generated. The limits are seasonally different because the stringent standard necessary to control ozone during the summer months is not necessary during the rest of the year. In addition, the lesser availability and higher price of natural gas during the rest of the year would make it unreasonable to require natural gas combustion year-round.

In deciding to propose different emission limits for boilers combusting natural gas seasonally, the Department determined that seasonal natural gas combustion is an appropriate alternative to other commercially available control methods. These methods include ammonia injection with a catalyst (selective catalytic reduction, or SCR), and ammonia or urea injection without a catalyst (selective non-catalytic reduction, or SNCR). The Department believes that the cost of SCR (estimated in a report prepared for EPA to be between \$1,500 and \$5,000 per ton of NO<sub>x</sub> removed) is currently too high for that method to be considered RACT. The Department also determined that SNCR should not be mandatory for this type of boiler, because seasonal natural gas combustion provides equivalent emission reduction at a lesser cost. However, the Department will consider the cost and benefits of these technologies again in developing emission limits for the State's 1994 revisions to its SIP.

The Department considered exempting utility boilers from installing NO<sub>x</sub> reduction controls if they could not employ low-NO<sub>x</sub> burners and were located in an area where natural gas was unavailable. However, based upon cost data contained in the EPA/NESCAUM report described above, the Department determined that such boilers may be able to control NO<sub>x</sub> emissions using SNCR at a cost comparable to the cost of using low-NO<sub>x</sub> burners and overfire air. Accordingly, the proposed new rules do not establish an exemption for such boilers. In applying for approval of an alternative maximum allowable emission rate (discussed in the summary of N.J.A.C. 7:27-19.13 below), the owner or operator would be required to consider whether the use of SNCR represents RACT for that boiler.

#### Repowering of utility boilers

N.J.A.C. 7:27-19.4(c) establishes an optional alternative method of compliance for certain utility boilers, in lieu of complying with the emission limits in N.J.A.C. 7:27-19.4(a). The alternative compliance method is available to any utility boiler which is to be "repowered" or shut down before May 15, 1999. "Repowering" means the replacement of the steam generator. The replacement system may be either a new boiler or stationary gas turbines.

The owner or operator of a utility boiler operated in compliance with N.J.A.C. 7:27-19.4(c) must annually adjust the combustion process of the boiler, in accordance with procedures tailored to the particular boiler and approved by the Department. While this alternative method is in effect, the boiler would be subject to no numerical NO<sub>x</sub> emission limits other than those set forth in the boiler's permit and certificate issued under N.J.A.C. 7:27-8.

The proposed new rules require the annual adjustment to begin in 1994, rather than 1995. The 1990 CAAA requires that RACT be implemented as expeditiously as practicable. The adjustment is practicable now; many owners and operators already are making such adjustments. Therefore, requiring the adjustment beginning in 1994 will give the owners and operators of utility boilers sufficient time to implement the new requirement.

To operate under the alternative compliance method, the owner or operator of the boiler must apply for Department approval before July 1, 1994. (The application procedures and criteria for Department review

are discussed in more detail in the description of N.J.A.C. 7:27-19.14 below.) After the Department approves the application, and before January 1, 1995, the owner or operator must enter into an agreement with the Department (which both the Department and EPA can enforce) prohibiting continued operation of the boiler after May 15, 1999 unless it is repowered, and satisfies emission limits which are more stringent than those set forth in N.J.A.C. 7:27-19.4(a). The Department's approval will establish milestones for the permit process for the utility boiler, which the owner or operator must meet.

As discussed in the summary of N.J.A.C. 7:27-19.3 above, upon repowering of a utility boiler (a project which is substantial enough to qualify as a "reconstruction"), the boiler must incorporate current advances in the art of air pollution control. To satisfy this requirement of the Department's permit rules at N.J.A.C. 7:27-8.8(d), the boiler may be required to achieve NO<sub>x</sub> emission rates which are lower than the rates set forth in N.J.A.C. 7:27-19.4(c).

The May 15, 1999 deadline coincides with the planned second phase of NO<sub>x</sub> controls which the OTC and NESCAUM have recommended. Utility boiler NO<sub>x</sub> emissions may have to be reduced to the more stringent levels set forth in N.J.A.C. 7:27-19.4(c) in order for states in the OTC region to attain the NAAQS for ozone by the deadline required under the 1990 CAAA. To achieve the more stringent limits, it is likely that the replacement steam generator must be equipped with advanced NO<sub>x</sub> control systems equivalent to the combination of low-NO<sub>x</sub> burners and SCR.

The Department has included this repowering provision in the proposed new rules at the suggestion of the utilities participating in the rule development working group. The Department agreed with the suggestion, for several reasons. First, if a boiler is to be operated for only a few years before being shut down or repowered, the cost of installing the necessary control measures is excessive compared to the emission reductions which will occur over their relatively short useful life. Second, the provision encourages the replacement of older, higher-polluting steam generators with newer ones which generate electricity more efficiently; this enhanced efficiency results in better usage of scarce resources, and reduces the quantity of pollutants emitted in generating a given amount of electricity. Finally, the delay in further reducing emissions from the boilers in question is offset by requiring that they be replaced, and subjecting their replacements to more stringent emission limits.

#### Continuous emissions monitoring

The 1990 CAAA requires the owner or operator of a source subject to Title IV of the Act to install a continuous emission monitoring system (CEMS) on each "affected unit" at the source to sample, analyze, measure and provide continuously a permanent record of emissions. 42 U.S.C. §7651k. This requirement will apply to essentially all utility boilers beginning on January 1, 2000.

N.J.A.C. 7:27-19.4(d) requires the owner or operator of any utility boiler to install CEMS on the boiler by May 31, 1995. The proposed new rules require this installation earlier than would otherwise be required under the 1990 CAAA, because utility boilers contribute a large portion of the total NO<sub>x</sub> emissions from stationary sources in the State; as a result, CEMS are needed to measure fluctuations in their NO<sub>x</sub> emissions which can have a substantial environmental impact. The importance of CEMS is heightened for utility boilers which are included in an averaging plan under N.J.A.C. 7:27-19.6; fluctuating emissions from a boiler authorized to emit NO<sub>x</sub> at higher rates under such a plan have an even greater potential environmental impact. In addition, the use of CEMS will improve the ability of the owner or operator to adjust the combustion process of a utility boiler in a manner which minimizes total emissions.

#### N.J.A.C. 7:27-19.5 Stationary gas turbines

N.J.A.C. 7:27-19.5 establishes emission rate limits for stationary gas turbines. A gas turbine is a turbine engine, fueled by liquid or gaseous fuel, which is used for generating mechanical energy in the form of a rotating shaft. This shaft then drives an electric generator or other industrial equipment. There are two main types of turbine designs, industrial and aero-derivative. The industrial turbines were designed to supply mechanical energy to industrial equipment, such as generators and compressors. The aero-derivative turbines are jet engines which have been converted to drive a shaft and are based on the designs used in the aerospace industry.

A stationary gas turbine is simply a gas turbine which is not self-propelled. A gas turbine mounted on an airplane as part of a jet engine

is self-propelled. A gas turbine which is mounted on a vehicle for portability is not considered self-propelled, and therefore is included in the definition of "stationary gas turbine."

The proposed new rules establish emission rate limits for the general types of stationary gas turbines. The types include "simple cycle gas turbines," "combined cycle gas turbines," and "regenerative cycle gas turbines." Simple cycle gas turbines do not recover heat from exhaust gases. Both combined cycle and regenerative cycle gas turbines recover some of that heat; the combined cycle turbine uses the recovered heat to heat water or generate steam, while the regenerative cycle turbine uses it to preheat the combustion air which is drawn into the gas turbine. The recovery of heat from the exhaust gases enables the combined cycle and regenerative cycle turbines to operate with a lower rate of emissions. Therefore, the proposed new rules establish more stringent emission limits for these types of turbines than for simple cycle turbines.

The level of NO<sub>x</sub> emissions also varies depending upon the type of fuel used in the turbine. The proposed new rules establish more stringent emission limits for gas-fired turbines than for oil-fired turbines, because a gas-fired turbine can achieve lower emission rates than an oil-fired turbine.

The emission limits reflect the results which gas turbines can achieve by installing water/steam injection, or retrofitting the turbine with dry low-NO<sub>x</sub> combustors. Injecting water or steam into the combustor lowers the combustion temperature, and thereby reduces the thermal formation of NO<sub>x</sub>. In a dry low-NO<sub>x</sub> combustor, air and fuel are premixed before they are injected into the combustor; this results in better control of the flame temperature, avoiding "hot spots" in which thermal formation of NO<sub>x</sub> would increase.

The Department expects that the cost of low-NO<sub>x</sub> combustors generally will range from approximately \$50.00 to \$600.00 per ton of NO<sub>x</sub> removed, based upon data prepared by EPA. The Department expects that the cost of water/steam injection generally will range from approximately \$500.00 to \$2,000 per ton of NO<sub>x</sub> removed, also based upon the EPA data. The emission limits in the proposed new rules reflect the use of either of these measures, based upon several studies published by the EPA and the Gas Research Institute. The owner or operator of a turbine might also choose to employ other control measures to achieve the same level of NO<sub>x</sub> emissions. For example, one New Jersey electric generating utility has developed oil-water emulsification technology which may significantly reduce NO<sub>x</sub> emissions from existing gas turbines.

Injecting water or steam to reduce NO<sub>x</sub> emissions can significantly increase emissions of carbon monoxide (CO) and of volatile organic compounds (VOCs). To ensure that the control of NO<sub>x</sub> does not unduly increase CO or VOC emissions, N.J.A.C. 7:27-19.5(c) limits the concentrations of carbon monoxide (CO) in the exhaust gas of a stationary gas turbine to 50 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen. Since CO and VOCs are both products of incomplete combustion, limiting CO emissions will also result in control of VOC emissions. The limit in the proposed new rules is equal to the least stringent limit which the Department currently includes in permits for new turbines. Including the percentage of oxygen in the limit reflects standard industry practice to provide a standard basis for measuring emissions notwithstanding different air to fuel ratios in different turbines.

For some facilities, water suitable for injection may not be available at a reasonable cost. The water must be filtered and de-ionized to prevent erosion and the formation of deposits in the hot section of the turbine. In addition, there may be no commercially available low-NO<sub>x</sub> combustor appropriate for use in a particular make or model of gas turbine. Accordingly, N.J.A.C. 7:27-19.5(c) establishes an alternative to compliance with the emission standards in N.J.A.C. 7:27-19.5(a) and (b) for turbines which do not have access to water for injection (due to restrictions on the quantity of water which the facility can use, or due to a lack of water pure enough to be made suitable for injection at a reasonable cost) and for which low-NO<sub>x</sub> combustors are not commercially available. The owner or operator of a turbine which establishes the lack of access to water and the unavailability of low-NO<sub>x</sub> combustors can obtain the Department's approval of a plan to comply with the rule through annual adjustments of the turbine's combustion process.

#### N.J.A.C. 7:27-19.6 Emission averaging system

The electric generating utilities participating in the working group suggested that the proposed new rules allow electric generating utilities to comply with this subchapter through "averaging," instead of causing each item of equipment or source operation to comply individually with the emission limits in N.J.A.C. 7:27-19.4 and 19.5. Under an averaging system, emissions from two or more of the utility's boilers or stationary

gas turbines are averaged to determine whether those units together comply with the emission limits in this subchapter.

The Department agreed that averaging of emissions would make compliance with the proposed new rules more flexible, and that it could develop an averaging provision which would prevent this alternative method of compliance from having an adverse environmental impact. This flexibility may benefit businesses other than electric generating utilities. Accordingly, the Department has not limited eligibility for averaging to electric generating utilities.

Any person owning or operating at least two items of equipment or source operations subject to subchapter 19 may request the Department's approval of an averaging plan. The person developing an averaging plan must identify the equipment and source operations to be included in the plan. The proposed new rules refer to those items collectively as the "designated set," and individually as "averaging units." The averaging units included in the plan may be located at one or more sites throughout the State, but must all be owned and operated by the same person.

N.J.A.C. 7:27-19.6(b) lists the requirements for the application for Department approval of an averaging plan. The central part of the application is a demonstration that if all averaging units included in the designated set are operating at maximum design capacity, their total emissions will be no greater than the total emissions which would be allowed from all of the averaging units if they were subject to the applicable emission limits set forth elsewhere in the rule.

The demonstration of peak emissions for the designated set is based upon two factors: a maximum allowable NO<sub>x</sub> emission rate which the applicant establishes for each averaging unit (and which then becomes an enforceable limit), and the daily heat input to each averaging unit when it is operating at maximum design capacity. These two factors are multiplied to determine the peak emissions for each averaging unit. The sum of these emissions for all of the averaging units is the "total peak estimated emissions," or "TPEE."

The TPEE must be no greater than the total emissions which would be allowed if each of the averaging units were subject to the applicable emission limits set forth elsewhere in subchapter 19. If this requirement is satisfied, all of the averaging units are considered to be in compliance with the emission limits of subchapter 19, even though the emissions from one or more units exceed the emission limit which would otherwise be applicable.

N.J.A.C. 7:27-19.6(c) lists the standards which the applicant must satisfy to obtain the Department's approval of the plan. The applicant must submit an application with all of the contents required under N.J.A.C. 7:27-19.6(b), including the demonstration that the TPEE of the designated set will be less than the total emissions which would otherwise be allowed. In addition, the applicant must demonstrate that each averaging unit can satisfy the NO<sub>x</sub> emission limit which the applicant has designated. The applicant must also enter into a Federally enforceable agreement with the Department subjecting each averaging unit to the designated emission limit. This requirement can be satisfied through the inclusion of conditions in the applicable permits and/or operating certificates.

As discussed above, one or more averaging units included in the designated set may exceed the emission limit which would otherwise be applicable. If allowing this averaging unit to exceed the emission limit could cause or materially contribute to an exceedance of the NAAQS for ozone in the area in which the averaging unit is located, or in a nearby area, then the Department would deny approval of the averaging plan.

N.J.A.C. 7:27-19.6(d) sets forth the operational requirements for a person operating under an approved averaging plan. These requirements are twofold: first, each averaging unit in the designated set must have actual NO<sub>x</sub> emissions no greater than the limit specified for that unit in the person's application for averaging approval; and second, the NO<sub>x</sub> emissions from all of the averaging units together cannot exceed the total emissions which would have been allowable if each had been subject to the applicable limit in subchapter 19.

In determining whether the applicant complies with the requirements of N.J.A.C. 7:27-19.6(d), the emissions are measured against the applicable limits over different periods. From May 15 through September 15, when ozone levels are most likely to be elevated, the emissions for each calendar day must comply with the applicable limits. From September 16 through the following May 14, the emissions for a rolling 30-day period must comply with the applicable limits. The rolling 30-day period is the series of 30-day periods beginning on September 16 and on each day thereafter, through the 30-day period which ends on the last day before the next ozone season.

In selecting the daily basis for the May 15-September 15 ozone season, the Department balanced the need to closely monitor and control emissions for the protection of public health and environment against the burden which increases as compliance is monitored over shorter periods. More frequent compliance monitoring (for example, hourly) would be extremely difficult at best due to the logistics involved in collecting and analyzing the data. However, less frequent compliance monitoring would substantially increase the likelihood of air quality violations and the resulting environmental harm, because ozone is generally created and dissipated on a daily basis.

Outside of the ozone season, the averaging period proposed is 30 days. At this time of year, the major danger from excessive NO<sub>x</sub> emissions is the formation of acid rain. This phenomenon is related to the total amount of NO<sub>x</sub> in the atmosphere over a longer period, rather than the total amount of NO<sub>x</sub> in the atmosphere during a given day. For this reason, the Department determined that 30-day rolling compliance monitoring outside of the ozone season is sufficient to protect the environment. The reduced frequency is consistent with the averaging time used in the federal acid rain program.

N.J.A.C. 7:27-19.6(g) requires the owner or operator to maintain the records required to evaluate compliance with the averaging program for five years after the date on which each record was made. This time period is consistent with the recordkeeping requirements already contained in N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds, and the requirements which EPA imposes.

Under N.J.A.C. 7:27-19.6(f) and (i), the owner or operator is required to monitor its compliance with the averaging plan and advise the Department of violations of the averaging plan by either an averaging unit or the designated set. The notice to the Department must include the information for which the owner or operator is required to keep records under N.J.A.C. 7:27-19.6(g), and an explanation of the reasons for the non-compliance, if known to the owner or operator. Compliance with these requirements will ensure effective and thorough monitoring of emissions, and will provide the Department with substantial information, possibly linking exceedances of NO<sub>x</sub> emission limits to their effect upon ozone levels. In addition, N.J.A.C. 7:27-19.6(h) requires quarterly reporting of the results of the averaging program. EPA has indicated that periodic reporting is necessary for the averaging system to satisfy the mandates of the 1990 CAAA.

The success of an averaging plan depends upon the continuing operation of the averaging units which are operating below the emission limits which would otherwise apply. However, circumstances beyond the control of the owner or operator may cause one or more of these units to become temporarily non-operational. In calculating the total emissions from the designated set, the heat input to the non-operational unit would be zero. As a result, the emissions of the entire designated set would almost certainly fail to meet the standard described above.

In this circumstance, the owner or operator can continue to comply by reducing the operations of one of its higher-emitting averaging units. However, an electric generating utility will not always be able to achieve compliance in this manner without making itself unable to meet demand for electricity. The utility may be able to comply with its averaging plan by other means, such as reducing the output of a higher-emission averaging unit and making up the resulting shortfall by purchasing electric power from another source; however, this approach will not always be practicable, especially at times of peak demand.

N.J.A.C. 7:27-19.6(i) provides that exceedances by electric generating utilities resulting from these temporary outages will not necessarily be considered violations. To calculate the emissions of the designated set during the first 15 days of the outage, the rule provides for the utility to use estimates of what the heat input and NO<sub>x</sub> emissions of the non-operational unit would have been if it had been operating. The estimates are based upon data from the most recent "comparable demand day" on which demand for electricity was within 10 percent of the demand on the day in question.

The Department also recognizes that it may not be practicable either to repair the non-operational unit within 15 days, or to comply with the averaging plan by other means. Accordingly, under the proposed new rules the utility can advise the Department of this impracticability; the utility would then be able to continue to use the estimated emissions figures during the period for which the Department determines that repair is impracticable. To avoid the environmental harm which could result if operation in this manner continued indefinitely (for example, into a second ozone season), this grace period will not exceed six months. The Department believes that six months is sufficient to repair even major malfunctions.

#### N.J.A.C. 7:27-19.7 Non-utility boilers

N.J.A.C. 7:27-19.7 establishes NO<sub>x</sub> emission limits for "non-utility boilers." A non-utility boiler is any steam generating unit (a furnace, boiler or other device combusting commercial fuel to produce steam) other than a utility boiler (which is specifically used to generate electricity). The proposed new rules establish requirements for three categories of non-utility boilers, based upon their maximum gross heat input rates.

The smallest boilers subject to N.J.A.C. 7:27-19.7(a) have heat input rates of at least 20 million but less than 50 million BTUs per hour. In the Department's experience, the potential emissions of boilers with heat input rates of less than 20 million BTUs per hour usually are less than 25 tons of NO<sub>x</sub> per year. N.J.A.C. 7:27-19.7(a) imposes no new emission limits upon boilers in the 20 to 50 million BTU per hour range. However, the owners or operators of these boilers will be required to adjust the combustion process in the boiler annually. The purpose of this adjustment is to ensure that the combustion process is operating as close to optimally as is practicable, thereby improving fuel economy and minimizing NO<sub>x</sub> emissions.

The requirements for boilers in this range are those which NESCAUM's Stationary Source Committee has recommended. The basis for the recommendation is that the cost of capital investments for emission control in boilers of this size would be disproportionate to the emissions reductions which the small boiler could be expected to achieve, in comparison to the emission reductions achievable by larger boilers. In addition, the personnel operating such boilers generally would not be expected to have the expertise needed for proper operation, maintenance and monitoring of the requisite control measures.

The proposed new rules establish 20 million BTUs per hour as the threshold for applicability of subchapter 19 to non-utility boilers. The Department has determined that boilers smaller than this size, and subject to limitations on operating hours under a permit or certificate, will have the potential to emit less than 25 tons of NO<sub>x</sub> per year. However, many of the boilers of this size predate N.J.A.C. 7:27-8 and were never required to obtain a permit or certificate. In the absence of any limit on their operating hours, such boilers could have the potential to emit 25 tons of NO<sub>x</sub> or more per year even though their actual emissions may be much less. Under the 1990 CAAA, the Department must require boilers with the potential to emit 25 tons of NO<sub>x</sub> or more per year to implement RACT.

For boilers smaller than 20 million BTUs per hour, the Department has determined that no NO<sub>x</sub> control measures represent RACT. The amount of NO<sub>x</sub> reductions which such boilers can achieve is small compared to the reductions available from larger boilers. As a result, the cost per ton of NO<sub>x</sub> removed by a given control measure will be higher for these smallest boilers. For the same reason, the cost of monitoring NO<sub>x</sub> emissions during adjustment of the combustion process would prevent that annual adjustment from being considered RACT. In addition, NO<sub>x</sub> emissions from all boilers of this size in New Jersey aggregate less than 10 percent of the NO<sub>x</sub> emissions from boilers in New Jersey generally. Accordingly, subchapter 19 does not require owners and operators of boilers smaller than 20 million BTUs per hour to implement NO<sub>x</sub> control measures.

Emission limits under N.J.A.C. 7:27-19.7(b) for the middle range of boilers (50 to 100 million BTUs per hour) vary depending on the type of fuel used in the boiler. These types of boilers generally are fueled by natural gas, no. 2 fuel oil or other types of fuel oil.

The proposed new rules incorporate the 0.1 pounds per million BTU emission limit which NESCAUM's Stationary Source Committee recommended for mid-sized boilers burning natural gas. The Department expects that a boiler burning natural gas normally will be able to meet this limit without installing additional controls.

The proposed new rules also incorporate the 0.12 pounds per million BTU emission limit which NESCAUM's Stationary Source Committee recommended for mid-sized boilers burning no. 2 fuel oil. The Department expects that these boilers will need to install low-NO<sub>x</sub> burners in order to meet this limit.

Boilers burning other liquid fuels such as nos. 4, 5 and 6 fuel oil will emit more NO<sub>x</sub> than boilers burning no. 2 fuel oil. Accordingly, NESCAUM's Stationary Source Committee recommended that limits for mid-sized boilers burning nos. 4, 5 or 6 fuel oil be based upon the use of both low-NO<sub>x</sub> burners and flue gas recirculation (with at least 20 percent of the flue gas being recirculated). The emission limit in the proposed new rules for other liquid fuels is based upon the use of those control measures.

NESCAUM's stationary source committee had recommended that mid-sized boilers burning wood, coal or other fuels aside from those discussed above, RACT should be determined by the states on a case-by-case basis. However, the Department believes that it is preferable to establish uniform emission limits when practicable to avoid the burden and delay associated with the need for EPA to review case-by-case RACT determinations as revisions to the State Implementation Plan (this procedure is discussed in the summary of N.J.A.C. 7:27-19.13 below). The Department has determined that the same control measures which constitute RACT for coal-fired utility boilers will also be RACT for mid-sized and larger coal-fired non-utility boilers. Accordingly, the emission limits for these non-utility boilers are the same as those required for coal-fired utility boilers.

NESCAUM's stationary source committee recommended treating the large utility boilers (at least 100 BTUs per hour) the same as utility boilers. Boilers of this size are generally constructed in the same manner as utility boilers, and therefore are capable of achieving similar emission rates. Accordingly, N.J.A.C. 7:27-19.7(c) applies the same emission limits for large non-utility boilers as are applied to utility boilers under N.J.A.C. 7:27-19.4.

The Department notes that the proposed new rules establish specific emission limits which it believes can be attained using RACT, rather than requiring the use of specific control technology. This approach allows flexibility in choosing control technology in order to produce the required result, and also establishes a baseline for use in an averaging plan under N.J.A.C. 7:27-19.6 or from which emission credits can be generated for use as offsets under N.J.A.C. 7:27-18.

N.J.A.C. 7:27-19.7(d) requires non-utility boilers with a maximum gross heat input rate of at least 250 million BTUs per hour to have continuous emissions monitoring systems installed. This requirement is consistent with EPA's New Source Performance Standards for industrial boilers.

#### N.J.A.C. 7:27-19.8 Stationary internal combustion engines

N.J.A.C. 7:27-19.8 establishes emission limits for "stationary internal combustion engines." The term includes any internal combustion engine which is not self-propelled; as is the case with stationary gas turbines, an engine which is mounted on a vehicle for portability is not "self-propelled," and therefore is within the scope of the definition.

The proposed new rule establishes different emissions limits based upon two factors: whether the engine uses liquid or gaseous fuel, and whether it is a "rich-burn" or "lean-burn" engine. The distinction between "rich-burn" and "lean-burn" engines reflects the ratio of air to fuel combusted in each type of engine; less air is combusted with a given amount of fuel in a rich-burn engine. EPA has stated that a lean-burn engine is one which has a concentration of oxygen in its exhaust of more than four percent, while a rich-burn engine has an exhaust oxygen concentration of four percent or less.

Different control measures are appropriate for each type of engine. Gaseous-fueled lean-burn engines can control NO<sub>x</sub> with clean-burn combustion technology; this approach uses more air in combusting a given amount of fuel. The excess air lowers combustion temperatures, thereby reducing NO<sub>x</sub> formation. Gaseous-fueled rich-burn engines can employ nonselective catalytic reduction; in this approach, a catalyst causes NO<sub>x</sub> to react with CO and unburned hydrocarbons to produce nitrogen, carbon dioxide and water. In a liquid-fueled lean-burn engine, retarded ignition timing reduces NO<sub>x</sub> formation through lowered combustion temperatures and pressures. In this type of engine, it may also be necessary to install separate circuit aftercooling to meet the emissions limits specified in the proposed rule.

The emission limits established in the proposed new rule are those which the NESCAUM Stationary Source Committee has recommended.

#### N.J.A.C. 7:27-19.9 Asphalt plants

N.J.A.C. 7:27-19.9 regulates emissions from asphalt plants with the potential to emit more than 25 tons of NO<sub>x</sub> per year. An asphalt plant is either a "batch type" or "drum mix" plant. In a drum mix asphalt plant, asphalt cement or another binder is added to the aggregate while the aggregate is in the rotary dryer (the cylindrical device which removes moisture as hot gases are passed through it). In a batch type asphalt plant, the asphalt cement or other binder is added to the aggregate after it has left the rotary dryer, usually just before being put into a delivery truck. The definition of "asphalt" sets forth the common meaning of the term.

The New Jersey Asphalt Paving Association has provided the Department with test data which demonstrates that the emission limits under the proposed new rules are reasonably achievable for both batch type

and drum mix asphalt plants. In addition to establishing emission limits, the proposed new rules require that the burner in an aggregate dryer be adjusted at least annually, as described in the discussion of N.J.A.C. 7:27-19.16 below. This "tuning" represents best management practice and will reduce the emissions of all pollutants from the facility, and improve fuel economy as well.

#### N.J.A.C. 7:27-19.10 Glass furnaces

N.J.A.C. 7:27-19.10 establishes NO<sub>x</sub> emission limits for glass manufacturing furnaces to which subchapter 19 is applicable. Subchapter 19 applies to glass furnaces manufacturing "commercial container glass" with a maximum potential production rate of 14 tons of glass to be removed from the furnace each day. A glass furnace manufacturing "specialty container glass" is subject to subchapter 19 if its maximum potential production rate yields at least seven tons of glass to be removed from the furnace each day. A furnace manufacturing glass using the "borosilicate recipe" (60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides) is subject to subchapter 19 if its maximum potential production rate yields at least five tons of glass to be removed from the furnace each day. As discussed below, the different applicability levels for different types of furnaces reflect the different potential NO<sub>x</sub> emissions for each type.

"Commercial container glass" is defined as clear or colored glass made using the soda-lime recipe (60 to 75 percent silicon dioxide, 25 to 40 percent other oxides, and no lead oxides) formed into containers other than "specialty container glass." "Specialty container glass" is similar to "commercial container glass" but is produced to meet the specifications established by the United States Pharmacopeial Convention, Inc.

The rules distinguish among various types of glass manufacturing furnaces, because each type requires different energy inputs to fuse the raw materials into glass. As a result, the emissions from similar furnaces producing different types of glass can vary significantly. The Glass Packaging Institute provided the Department with information relating to the NO<sub>x</sub> emissions from each type of glass manufacturing furnace. The Department has considered that information in determining the potential production rates which would subject each type of furnace to regulation under subchapter 19. The emission limits established for each type of furnace also reflect that information.

The owner or operator of any of these types of glass furnaces subject to subchapter 19 must annually adjust the combustion process of the furnace. While this alternative method is in effect, the furnace would be subject to no numerical NO<sub>x</sub> emission limits other than those set forth in the furnace's permit and certificate issued under N.J.A.C. 7:27-8.

The proposed new rules require the annual adjustment to begin in 1994, rather than 1995. The 1990 CAAA requires that RACT be implemented as expeditiously as practicable. The adjustment is practicable now; many owners and operators already are making such adjustments, though they may not be monitoring the adjustment for its effect on NO<sub>x</sub> emissions. Therefore, requiring the adjustment beginning in 1994 will give the owners and operators of glass furnaces sufficient time to implement the new requirement.

In addition to the requirement for annual combustion adjustment, a glass furnace will become subject to specific emission limitations on May 1, 1997, unless the furnace is "rebricked" (having damaged or worn bricks replaced while the furnace contains no molten glass) before that date; in that event, the furnace becomes subject to the emission limitations on the date the rebricking is completed.

The Department established different requirements for different classes of glass furnaces, based on rebricking, to address problems which representatives of the Glass Packaging Institute pointed out in discussions with the Department. Generally, a glass furnace must be rebricked in order to make the combustion modifications necessary to comply with the emission limit in the proposed new rule. Rebricking is normally done at intervals of five to 10 years, and can cost several hundred thousand dollars. The flexibility in the time at which the combustion modification must occur makes it more likely that the owner or operator of a furnace will incur the expense of rebricking in the course of its business (at or near the end of the useful life of the furnace), rather than doing so solely to comply with the proposed new rules.

The cost of rebricking a furnace significantly before the end of its normal useful life solely to comply with the proposed new rules would be high enough that the installation of control technology at that time would not be RACT. Accordingly, the Department has determined that up to that time, the combustion adjustment required under the proposed new rules is RACT. In light of the number of glass furnaces operating in the State, the likelihood that a number of them will undergo rebricking

before 1997, and the emission reductions which can be achieved through the annual tuning, the Department has determined that the two sets of RACT requirements for rebricked/non-rebricked furnaces would not jeopardize achievement of the ozone NAAQS.

The emission limits for furnaces producing commercial container glass and specialty container glass are identical to those which had been applicable in California until 1990. In 1990, California established a more stringent standard. After considering data supplied by the Glass Packaging Institute based on the experience of its members in California, the Department determined that California's current standard cannot be satisfied using RACT, but that the emission limits in place until 1990 were achievable using RACT. The Department will consider applying standards equivalent to those currently in effect in California in the course of preparing the 1994 revisions to New Jersey's SIP.

The proposed new rules do not establish a single emission limit for furnaces producing borosilicate recipe glass. The Department does not have sufficient data upon which it could base a single standard, and no other jurisdiction has such a standard in effect. New Jersey is one of only a few states in which borosilicate recipe glass is produced.

Instead of establishing a single emission limit, the proposed new rules require the owner or operator of a borosilicate recipe glass furnace to determine its baseline NO<sub>x</sub> emission rate by January 1, 1994, and to submit a plan by July 1, 1994 explaining how those baseline emissions will be reduced by 30 percent. The furnace must then implement the plan and reduce its emissions accordingly. However, if the owner or operator of the furnace can demonstrate that the NO<sub>x</sub> emission rate from the furnace has already been reduced by at least 30 percent from uncontrolled emissions measured on or after November 15, 1990, the proposed new rules do not require an additional reduction.

Information provided by the Glass Packaging Institute indicates that borosilicate recipe glass furnaces in New Jersey can achieve the 30 percent reduction in NO<sub>x</sub> emissions with the use of RACT. The Glass Packaging Institute has advised the Department that it believes the reduction is reasonably attainable.

#### **N.J.A.C. 7:27-19.11 and 12 Reserved sections**

The proposed new rules do not establish numerical emission limits or other RACT requirements for incinerators. An incinerator is defined as using combustion or pyrolysis (subjecting materials to very high temperatures) to destroy, reduce or salvage any material or substance. The definition includes solid waste resource recovery facilities which produce energy from the incineration of solid waste. Thermal or catalytic oxidizers used as control apparatus on manufacturing equipment are excluded from the definition.

The Department understands that as required by the 1990 CAAA, EPA is about to release a revised new source performance standard (NSPS) for municipal waste combustors. Therefore, the Department will postpone specifying a NO<sub>x</sub> emission limit for these sources until after EPA has released the NSPS. For ease of future codification of RACT requirements for incinerators and for other types of equipment and source operations, the proposed new rules reserve N.J.A.C. 7:27-19.11 and 19.12.

Until subchapter 19 establishes RACT standards specifically tailored to incinerators, the owner or operator of an incinerator with the potential to emit at least 10 tons of NO<sub>x</sub> per year, and which is part of a "major NO<sub>x</sub> facility" having the potential to emit 25 tons or more of NO<sub>x</sub> per year, must obtain the Department's approval of a facility-specific NO<sub>x</sub> control plan, pursuant to N.J.A.C. 7:27-19.13 (described below).

#### **N.J.A.C. 7:27-19.13 Facility-specific NO<sub>x</sub> emission limits**

Subchapter 19 establishes requirements which represent RACT for various specific types of equipment and source operations. However, the Department recognizes that in certain limited circumstances these standardized requirements will be inapplicable or inappropriate.

Accordingly, N.J.A.C. 7:27-19.13 establishes a procedure for a case-by-case determination of what represents RACT for a particular facility, item of equipment or source operation. The procedure is applicable in two types of situations.

First, a major NO<sub>x</sub> facility (with the potential to emit 25 tons or more of NO<sub>x</sub> per year) may contain equipment and source operations other than the types for which subchapter 19 establishes specific requirements, and which themselves have a significant potential to emit NO<sub>x</sub>. For each source operation or item of equipment at the facility which is not specifically regulated under other sections of subchapter 19, but individually has the potential to emit at least 10 tons of NO<sub>x</sub> per year, the owner or operator must submit a proposed NO<sub>x</sub> control plan to the

Department. The plan will evaluate the available control technologies for technological and economic feasibility, and propose a NO<sub>x</sub> emission limit for each affected item of equipment or source operation.

Second, a source operation or item of equipment which is subject to a NO<sub>x</sub> emission limit under subchapter 19 may be unable to comply with the limit even through the use of RACT. The Department believes that the emission limits established in the proposed new rules normally will be attainable using RACT. However, in some circumstances, control measures which would normally be considered RACT cannot practically be designed for or installed in a given source operation or item of equipment. In addition, circumstances peculiar to a given source operation or item of equipment may render normally effective control measures incapable of reducing emissions to the limits required under subchapter 19. To address these circumstances, under N.J.A.C. 7:27-19.13 the Department may establish an alternative maximum allowable emission rate for a particular source operation or item of equipment.

For each of these two situations, N.J.A.C. 7:27-19.13 provides for the Department to establish emission limits based upon a RACT determination specific to the facility in question. The procedures for requesting that determination, and the standards for review of the request, are the same in each situation.

The owner or operator of a facility for which a NO<sub>x</sub> control plan is required must obtain approval of the plan, implement it by May 31, 1995, and continue to comply with it thereafter. The 1990 CAAA imposes this deadline. Implementing the plan includes obtaining the required permits and certificates, installing the approved NO<sub>x</sub> control technology, and complying with the emission limits approved in the plan. An owner or operator seeking approval of an alternative maximum allowable emission rate must obtain approval before the source operation or item of equipment in question becomes subject to the rate normally applicable under subchapter 19, in order to avoid incurring violations for exceeding that normally applicable rate.

The NO<sub>x</sub> control plan must address each source operation or item of equipment at the facility with the potential to emit at least 10 tons of NO<sub>x</sub> per year. Without this 10 tons per year (tpy) threshold, the plan would have to address every source of NO<sub>x</sub> emissions at the facility, no matter how small. The costs of analyzing the control technology for all such sources would far outweigh the reduction in emissions which would result, given the size of the contribution of the smaller sources to statewide NO<sub>x</sub> emissions and the likelihood that control technology representing RACT for larger sources would be economically feasible for small sources. In the Department's experience applying its VOC rules at N.J.A.C. 7:27-16, the 10 tpy threshold strikes an appropriate balance among the cost of analyzing control technologies for a given source, the emissions reductions which the control technologies are likely to produce, and the likelihood that the control technology will be considered RACT for the source in question.

The facility-specific RACT determination is based upon an application submitted to the Department. The application must describe the types of control measures which are available, and explain the reasons why the owner or operator has rejected any of them. For example, the owner or operator may believe that the measures cannot reasonably be designed for and installed in the equipment or source operation in question, or that the measures will not reduce NO<sub>x</sub> emissions to the required level. The application must also include a proposed emission limit to apply in lieu of the normally applicable limit.

The Department's decision to approve or deny the application is based on the interpretation of RACT described in the summary of N.J.A.C. 7:27-19.2 above. This interpretation requires analysis of several factors: the suitability and likely effectiveness of control measures normally used; the availability of suitable and effective control measures other than those which are normally used, and the cost of those measures; whether the proposed alternative rate is the lowest rate which can be achieved at a cost comparable to the cost of the usual control measures; and whether the cost of further emission reductions would be disproportionate to their extent and impact. In addition, there must be no alternative means of compliance with subchapter 19 (such as emissions averaging of seasonal combustion of natural gas) available.

Before altering any equipment or source operation, the owner or operator is generally required to obtain a permit and certificate under N.J.A.C. 7:27-8. N.J.A.C. 7:27-19.13(i) sets forth additional requirements when the Department has approved a NO<sub>x</sub> control plan or alternative maximum allowable emission rate for the equipment or source operation to be altered.

If the Department has approved an alternative maximum allowable emission rate for the equipment or source operation to be altered, an

alteration will automatically void that approval; as a result, the equipment or source operation would become subject to the more stringent emission limit which would have been applicable in the absence of the approved alternative rate. The owner or operator can avoid that result by obtaining the Department's approval of a new alternative rate or of continued use of the existing alternative rate before making the alteration. The Department will approve continued use of the existing alternative rate when the alteration does not affect the facts upon which the original approval was based.

If the altered equipment or source operation is the subject of a NO<sub>x</sub> control plan approved under N.J.A.C. 7:27-19.13, the owner or operator must obtain the Department's approval of an amendment to the control plan, to reflect the proposed alteration. The Department would evaluate the amendment based on same criteria which it applied in approving the original proposed plan. If the owner or operator commences operation of the altered equipment or source operation before the Department approves an amendment, the Department may amend the plan on its own initiative. The amendment would be designed to satisfy the same criteria as the Department would have applied in evaluating the owner or operator's submission.

The Department may revoke its approval of a NO<sub>x</sub> control plan or alternative rate, on several grounds. These grounds include the violation of any material conditions of the approval; a determination by the Department that its decision to grant the approval was materially influenced by a misstatement or omission of fact; a change in circumstances (such as the availability of natural gas for seasonal combustion or water for injection in the combustion process) which would enable the equipment or source operation to comply with more stringent emission limits; a rejection by EPA of the control plan or alternative rate as a revision to the SIP; or a potential threat to public health, welfare or the environment resulting from continued operation of the equipment or source operation at the alternative rate.

The Department recognizes that if natural gas or water becomes available which would enable the equipment or source operation to comply with the standard emission limits, it will take some time for the owner or operator to take the actions necessary to comply. Accordingly, in revoking an approval on this basis the Department will delay the effective date of the revocation, to allow a reasonable amount of time for the owner or operator to achieve compliance.

The denial or revocation of the approval of an alternative rate is generally grounds for an adjudicatory hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. However, if the revocation is based upon EPA's rejection of the alternative rate, the rule does not provide for such a hearing because the issues raised by the rejection cannot be resolved in that type of hearing.

Under the 1990 CAAA, the State's SIP must be revised to require major stationary sources of NO<sub>x</sub> to implement RACT. P.L. 101-549, §182(f). Accordingly, for major NO<sub>x</sub> facilities obtaining approval of a facility-specific RACT under N.J.A.C. 7:27-19.13, the Department's approval of the facility's NO<sub>x</sub> control plan is subject to EPA's approval as a revision of the State's SIP. In contrast, for specific types of equipment and source operations specifically regulated under the proposed new rules, EPA's approval of the proposed new rules as a SIP revision will obviate the need for such facility-by-facility EPA approval. Therefore, the Department's approval of a facility-specific NO<sub>x</sub> control plan is subject to revocation if EPA disapproves the SIP revision for the facility.

The Department is required under Federal law to solicit public comments before making a decision which must be submitted to EPA for approval as a revision to a SIP. Accordingly, the proposed new rules require the Department to obtain public comment on a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate.

As noted in the summary of N.J.A.C. 7:27-19.7 above, the Department has determined that no NO<sub>x</sub> control measures available for non-utility boilers smaller than 20 million BTUs per hour qualify as RACT. Accordingly, if utility boilers of this size are the only sources at a major NO<sub>x</sub> facility with the potential to emit 10 tons of NO<sub>x</sub> or more per year, the owner or operator of the facility is not required to submit a NO<sub>x</sub> control plan for the facility. The proposed new rules already state what is RACT for the sources regulated at the facility, making a facility-specific RACT determination unnecessary.

#### N.J.A.C. 7:27-19.14 Procedures for obtaining approvals

Several provisions discussed above allow alternative methods of compliance with subchapter 19. Under N.J.A.C. 7:27-19.4(b), owners and

operators of certain utility boilers can comply with emission limits different from those required under N.J.A.C. 7:27-19.4(a), if they combust natural gas seasonally. N.J.A.C. 7:27-19.4(c) allows owners and operators of utility boilers which are to be shut down or repowered to comply with an alternate set of requirements. Under N.J.A.C. 7:27-19.5(c), owners and operators of certain stationary gas turbines have an alternative to compliance with the emission limits which would otherwise be applicable under N.J.A.C. 7:27-19.5(a) and (b). Under N.J.A.C. 7:27-19.18, an owner or operator can obtain approval of a plan under which it could avoid installing continuous emissions monitoring systems on all equipment and source operations for which such a system would normally be required. All of these procedures require the Department's prior written approval. N.J.A.C. 7:27-19.14 sets forth the procedure for obtaining that approval, including application requirements and time frames for the Department's response.

The approval is valid for three years, and can be renewed. However, the approval becomes void upon the alteration of the equipment or source operation which is the subject of the approval. In addition, the Department can revoke the approval in certain limited circumstances. If the owner or operator violates a material condition of the approval, or if the Department's decision to grant the approval was materially influenced by a misstatement or omission of fact, there would be grounds for revocation. In addition, the circumstances upon which the approval was based may have changed to make the approval unnecessary; for example, if a stationary gas turbine lacked a supply of water needed for NO<sub>x</sub> control through injection of water or steam, the approval could be revoked if that water supply becomes available. In this circumstance, the Department would delay the effect of the revocation, to provide the owner or operator with time to come into compliance. Finally, if emissions from a source complying with the control plan have an adverse effect upon public health or the environment, this would be grounds for revocation. The Department would not approve a plan which could reasonably be expected to have such an adverse effect, but such unanticipated effects can occur in practice. The denial or revocation of an approval is grounds for an adjudicatory hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Until the approval is issued, the equipment or source operation is required to comply with the applicable requirements of subchapter 19. Accordingly, if the equipment or source operation exceeds an applicable emission limit after submitting an application but before receiving approval, the submission of the application is not a defense to an enforcement action.

#### N.J.A.C. 7:27-19.15 Procedures for demonstrating compliance

N.J.A.C. 7:27-19.15 sets forth the methods by which the owner or operator of equipment or a source operation subject to subchapter 19 can demonstrate that its emissions are in compliance. For some types of equipment and source operations (discussed in the summary of N.J.A.C. 7:27-19.18 below), the owner or operator is required to use a continuous emission monitoring system to monitor and record the emissions from the source. Otherwise, the owner or operator may elect to conduct stack testing to measure the emissions from the source, or to use continuous emissions monitoring.

Through the testing or monitoring described above, the owner or operator must demonstrate that the emissions from the equipment or source operation do not exceed the applicable limit under subchapter 19. That limit may be specifically set forth in subchapter 19, or in an averaging plan approved pursuant to subchapter 19, or in the approval of an alternative limit for a specific facility.

If the equipment or source operation subject to the emission limit has a continuous emissions monitoring system installed, the owner or operator demonstrates compliance with the limit based upon the average of emissions over one calendar day (except when a 30-day average is required under N.J.A.C. 7:27-19.6). If the equipment or source operation has no continuous emissions monitoring system installed, the compliance demonstration is based upon the average of three one-hour stack tests under maximum capacity operating conditions. The Department's experience has shown that this number and duration of stack tests is the minimum necessary to determine the representative worst-case emissions from the source.

For equipment and source operations which begin operating before January 1, 1995, the owner or operator must demonstrate compliance by May 31, 1996. If the equipment or source operation begins operations after January 1, 1995, or is altered after that date, the owner or operator must demonstrate compliance within 180 days after operations of the new or altered source commence. The permit issued for the equipment

or source operation will state the frequency of future compliance demonstrations. The criteria for establishing that frequency will be set forth in the operating permit rule, required under the 1990 CAAA, which the Department expects to propose by April, 1993.

If the testing or monitoring required to demonstrate compliance shows instead that the equipment or source operation is exceeding the applicable NO<sub>x</sub> emission limits, the exceedance is considered a violation of subchapter 19 for which the Department may assess penalties under N.J.A.C. 7:27A.

#### N.J.A.C. 7:27-19.16 Adjusting combustion processes

For certain types of equipment and source operations, the proposed new rules do not impose numerical NO<sub>x</sub> emission limits, but do require that emissions be controlled through annual adjustment of the combustion process. The proposed new rules impose the same requirement upon certain types of equipment and source operations for which the proposed new rules postpone the application of numerical limits. The first group of equipment and source operations includes asphalt plants and certain non-utility boilers; the latter group includes utility boilers to be shut down or reoperated, and glass manufacturing furnaces awaiting rebricking.

The annual adjustment includes inspection of the burner, the flame pattern from the burner, and the systems which control the air-to-fuel ratio. Based on the results of the inspections, the air-to-fuel ratio is to be adjusted.

Normal maintenance procedures include these tuning adjustments. The adjustments not only minimize emissions, but also improve fuel efficiency. The proposed new rule imposes one additional requirement beyond those normal maintenance procedures: that the owner or operator monitor the effect of the adjustment upon NO<sub>x</sub> emissions, and complete the adjustment in a manner which minimizes total emissions of NO<sub>x</sub> and CO.

Following each adjustment required under subchapter 19, the owner or operator must confirm that emissions from the equipment or source operation do not exceed applicable limits under the rule or the permit or operating certificate for the equipment or source operation. The owner or operator also must maintain a log of information regarding each adjustment required under subchapter 19; this information includes the NO<sub>x</sub> and CO emissions rates following the adjustment, and the concentration of O<sub>2</sub>, which is necessary to provide a consistent basis for evaluating those emissions.

The Department seeks public comments regarding the need to monitor and record NO<sub>x</sub> emissions when an owner or operator makes combustion adjustments in addition to those required under subchapter 19. The Department believes that if the owner or operator monitors NO<sub>x</sub> and CO emissions during the required adjustments and determines that the adjustment minimizes total NO<sub>x</sub> and CO emissions, more frequent adjustments will continue to minimize those total emissions if the owner or operator maintains the air-to-fuel ratio within the same range which was previously found to minimize total emissions. For this reason, the Department believes that it would be unnecessary to monitor and record NO<sub>x</sub> emissions during those follow-up adjustments to ensure that total NO<sub>x</sub> and CO emissions are minimized. Accordingly, the rule as proposed requires that total NO<sub>x</sub> and CO emissions be minimized in both required and additional adjustments, but does not require monitoring or recording of NO<sub>x</sub> emissions for the additional adjustments.

#### N.J.A.C. 7:27-19.17 Source emissions testing

Under N.J.A.C. 7:27-19.17(a), the owner or operator of equipment or a source operation subject to subchapter 19 must test the emissions from that equipment or source operation upon request by the Department or EPA. The owner or operator is also required to supply information regarding emissions to the Department or EPA upon request. This requirement is necessary to enable the Department to monitor compliance with subchapter 19 effectively, and to enable EPA to review the State's compliance with the requirements of the 1990 CAAA and other provisions of the Clean Air Act.

N.J.A.C. 7:27-19.17(b) requires the owner or operator of a facility subject to subchapter 19 to provide the Department with temporary or permanent facilities from which it can conduct stack tests at the facility. Generally, these facilities will include ports in the stack, scaffolding necessary to reach the stack, and utilities for sampling and testing equipment; they do not include the instruments which the Department will use when it measures the emissions. The substance of the requirement is the same as the corresponding requirement in N.J.A.C. 7:27-16.9(c) for sources of volatile organic compounds.

N.J.A.C. 7:27-19.17(c) and (d) establish requirements necessary for reliable test results. N.J.A.C. 7:27-19.17(c) requires that during testing, the owner or operator must operate the equipment or source operation being tested (and related components) under normal routine operating conditions, or under other conditions within the capacity of the equipment which the Department or EPA specifies. N.J.A.C. 7:27-19.17(d) requires the use of test methods established by EPA in its regulations, or equivalent test methods approved by EPA and the Department. The Department will approve any test method which EPA approves, if the alternative method yields results at least as consistent as the methods listed in EPA's regulations, and is no more likely to understate emissions than those methods.

#### N.J.A.C. 7:27-19.18 Continuous emissions monitoring

As discussed above, several types of equipment and source operations must have continuous emissions monitoring systems installed. N.J.A.C. 7:27-19.18 requires that these systems meet EPA performance specifications and quality assurance requirements. In addition, the owner or operator must install and operate the system in compliance with the manufacturer's specifications and EPA requirements, and use it to monitor and record NO<sub>x</sub> emissions continuously.

Under N.J.A.C. 7:27-19.18(a), the owner or operator must obtain the Department's approval of the system before it is installed. The Department recommends that the owner or operator obtain this approval before purchasing the system, so that the Department can confirm that the system will satisfy EPA requirements before the owner or operator has made a substantial investment in the system. After installation, the owner or operator must conduct performance tests on the system and obtain confirmation from the Department that the system's performance meets EPA requirements.

If a facility contains multiple items of equipment or source operations which are of the same make and model, and which are operated under similar conditions, the owner or operator of the facility may submit a plan to install continuous emissions monitoring systems on less than all of the items of equipment or source operations. N.J.A.C. 7:27-19.18 sets forth the procedure for submitting the plan and the criteria for the Department's approval. Approval under these criteria depends upon whether a continuous emissions monitoring system will be installed on at least one representative unit of each class of similar equipment or source operations. However, the 1990 CAAA requires that continuous emissions monitoring systems be installed on utility boilers; accordingly, the plan for limited installation must still satisfy that requirement.

#### N.J.A.C. 7:27-19.19 Recordkeeping

N.J.A.C. 7:27-19.19 establishes recordkeeping requirements. Persons required to record or maintain information or records under subchapter 19 must retain the records for five years, and make them available to the Department or to EPA upon request. The requirements are consistent with the corresponding requirements under the volatile organic compounds rules at N.J.A.C. 7:27-16.

#### N.J.A.C. 7:27A-3.5 Civil administrative penalty determination—general

N.J.A.C. 7:27A-3.5 sets forth general provisions applicable to assessments of civil administrative penalties for violations of the Air Pollution Control Act, and the rules which the Department has promulgated under the authority of that Act. The purpose of the proposed amendments to N.J.A.C. 7:27A-3.5 is to enhance the Department's flexibility in considering mitigating or aggravating circumstances in assessing a penalty. The Department expects that this flexibility will enable it to assess penalties which accurately reflect all of the circumstances relevant to a violation, and which closely reflect the amount which the Department would seek to collect in settling a penalty assessment. The proposed amendments are similar to the corresponding provision of the Department's rules at N.J.A.C. 7:1E-6.8(d), Discharges of petroleum and other hazardous substances.

Under the proposed amendments, the Department could consider mitigating or aggravating circumstances in assessing a penalty in an amount which differs from the base amount set forth in the rule. Examples of such circumstances include the following:

1. The alleged violator's compliance history;
2. The number of times and the frequency with which the violation is asserted to have occurred;
3. The severity of the violation;
4. The nature, timing and effectiveness of any measures taken by the alleged violator to mitigate the effects of the violation; and

5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent to which such measures are in addition to those required under an applicable statute or rule.

The Department notes that none of these factors is the basis for a defense to any violation. Most importantly, while a person's prompt and effective corrective measures to prevent future violations are certainly mitigating factors to be considered in assessing a penalty, they do not constitute a defense to the violation.

The proposed amendments also clarify N.J.A.C. 7:27A-3.5(d). The intent behind this provision is to state how penalties will be assessed for a violation when N.J.A.C. 7:27A provides no set penalty for that violation. The existing provision states that in this circumstance, the Department will assess a penalty within a fixed range. The Department has determined that this provision does not provide helpful guidance, because the fixed range is not always appropriate for the wide variety of types of violations within the scope of the provision.

The proposed amendments to N.J.A.C. 7:27A-3.5(d) provide that when the rules do not set a penalty for a particular violation, the Department will base its penalty assessment upon two types of factors. First, the Department will determine a base penalty, which will be comparable to penalties established in N.J.A.C. 7:27A for violations similar to the one in question. Second, the Department will adjust that penalty to reflect the same mitigating or aggravating circumstances discussed above.

**N.J.A.C. 7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act**

N.J.A.C. 7:27A-3.10(e)19 establishes civil administrative penalties for violations of each requirement of subchapter 19. In setting the penalty amounts, the Department has applied the following criteria:

1. The potential or actual health and environmental impacts of the violation. That impact depends upon factors including the characteristics and quantity of the pollutants involved, and the magnitude of the area affected;

2. The deterrent value of the penalty (that is, the amount sufficient to make the penalty a disincentive which will discourage violations); and

3. Consistency with other DEPE penalties, especially penalties for comparable types of air pollution control penalties. For example, the penalties for violations of emission limits under subchapter 19 correspond to existing penalties for violations of emission limits in permits for sources of similar sizes. Penalties for violations of subchapter 19 recordkeeping requirements correspond to existing penalties for violations of recordkeeping requirements, and the same is true for violations of reporting requirements. The table below cross-references the violations for which the proposed amendments establish penalties, and the comparable violations for which the existing rules establish the same penalties.

Provision of subchapter 19 for which a penalty for violation is proposed	Provision of existing rules with corresponding penalty for comparable violation
N.J.A.C. 7:27-19.4(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(b)3	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(b)4i	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(b)4ii	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(b)5	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(c)1	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(c)2	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(c)6	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.4(d)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.5(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.5(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.5(c)5	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.5(c)6	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.5(d)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.6(d)1	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.6(d)2	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.6(f)1	N.J.A.C. 7:27-16.5(m)
N.J.A.C. 7:27-19.6(f)2	N.J.A.C. 7:27-16.5(m)
N.J.A.C. 7:27-19.6(g)	N.J.A.C. 7:27-16.6(i)1
N.J.A.C. 7:27-19.6(h)	N.J.A.C. 7:27-16.6(i)2
N.J.A.C. 7:27-19.6(i)	N.J.A.C. 7:27-17.5(e)
N.J.A.C. 7:27-19.6(j)1	N.J.A.C. 7:27-17.5(e)
N.J.A.C. 7:27-19.7(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.7(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.7(c)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.7(d)	N.J.A.C. 7:27-8.3(e)1

N.J.A.C. 7:27-19.8(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.8(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.8(c)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.9(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.9(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.10(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.10(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.10(c)1	N.J.A.C. 7:27-17.6(a)
N.J.A.C. 7:27-19.10(c)2*	
N.J.A.C. 7:27-19.10(c)3*	
N.J.A.C. 7:27-19.10(c)4	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.10(e)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.13(i)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.13(m)*	
N.J.A.C. 7:27-19.16(c)	N.J.A.C. 7:27-16.6(i)1
N.J.A.C. 7:27-19.17(a)1	N.J.A.C. 7:27-17.6(a)
N.J.A.C. 7:27-19.17(a)2	N.J.A.C. 7:27-16.9(c)
N.J.A.C. 7:27-19.17(a)3	N.J.A.C. 7:27-16.9(c)
N.J.A.C. 7:27-19.17(a)4	N.J.A.C. 7:27-16.9(c)
N.J.A.C. 7:27-19.17(b)	N.J.A.C. 7:27-16.9(e)
N.J.A.C. 7:27-19.17(e)	N.J.A.C. 7:27-16.5(m)
N.J.A.C. 7:27-19.18(a)2	N.J.A.C. 7:27-16.9(d)
N.J.A.C. 7:27-19.18(a)3	N.J.A.C. 7:27-16.9(d)
N.J.A.C. 7:27-19.18(a)4	N.J.A.C. 7:27-16.9(d)
N.J.A.C. 7:27-19.18(a)5	N.J.A.C. 7:27-16.9(d)
N.J.A.C. 7:27-19.18(h)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-19.19(a)	N.J.A.C. 7:27-16.5(m)

The penalties for violations of N.J.A.C. 7:27-19.10(c)2 and 3 (failure to submit and implement NO<sub>x</sub> emission reduction plan for borosilicate recipe glass furnaces) and of N.J.A.C. 7:27-19.13(m) (failure to implement NO<sub>x</sub> control plan, if required under subchapter 19), noted by asterisks (\*) above, are equal to the highest penalties the Department assesses for violations of the air pollution control regulations. Compliance with these requirements is essential to New Jersey's efforts to attain the ozone NAAQS, and is therefore central to the rule. Violations of these requirements pose a significant risk of harm to public health and the environment.

Pursuant to N.J.A.C. 7:27A-3.12, the Department retains the ability to assess penalty amounts, in addition to the proposed penalties, to offset any economic benefit which the violator may have realized as a result of not complying with the rules.

**Social Impact**

N.J.A.C. 7:27-19 will have a positive social impact in requiring control of NO<sub>x</sub> emissions from boilers, stationary gas turbines, stationary internal combustion engines, asphalt plants, glass manufacturing furnaces and other major sources of NO<sub>x</sub>. Subchapter 19 will help to reduce the damage to forests, lakes and streams caused by acid rain, which is exacerbated by emissions of NO<sub>x</sub>. Furthermore, reducing NO<sub>x</sub> emissions is necessary to enable New Jersey to achieve and maintain the NAAQS for ozone. As a result, subchapter 19 will help to reduce the exposure to ozone by persons who live or work in New Jersey, and reduce or prevent the degradation of plant life and various human-made materials caused by elevated concentrations of ozone. The social impact statement in the Department's proposed rules for the low emission vehicle program describe the specific effects of elevated ozone concentrations on public health, farm products and other plant life, and materials such as rubber, plastics, dyes and paints. See 24 N.J.R. 1320 (April 6, 1992).

The proposed amendments to the rules governing civil administrative penalties will have a positive social impact, by encouraging compliance and discouraging noncompliance with the State's air pollution control laws and regulations.

**Economic Impact**

N.J.A.C. 7:27-19 will result in both positive and negative economic impacts. Persons required to comply with subchapter 19 will incur compliance costs; however, compliance will also result in improved air quality which will mitigate the substantial costs currently associated with air pollution.

**Compliance cost—by type of source**

The economic impact of subchapter 19 upon persons required to comply with it will vary, depending upon the type of source regulated and the type of technology which the owner or operator of the source employs to meet the emission limits. In addition, several factors influencing cost will vary with circumstances specific to a given source at a given

site. These factors include, for any particular source, the ease with which the control technology can be designed and installed, the rate of uncontrolled emissions, the precise extent to which the control technology will reduce NO<sub>x</sub> emissions, and the remaining useful life of the source operation. Due to the cost variations resulting from these source-specific factors, the estimates of compliance costs must be expressed as generally applicable ranges, rather than as single dollar figures.

The compliance costs for each type of source are discussed below.

**Utility boilers:** As noted in the summary above, the Department believes that utility boilers generally can comply with subchapter 19 by employing low-NO<sub>x</sub> burners in conjunction with overfire air, at a cost ranging from \$570.00 to \$1,500 per ton of NO<sub>x</sub> emissions removed. If this additional cost were passed on to the utility's customers, electricity costs would increase by \$0.0004 to \$0.0008 per kilowatt-hour. These estimates are based upon the report entitled "Evaluation and Costing of NO<sub>x</sub> Controls for Existing Utility Boilers in the NESCAUM Region" prepared for NESCAUM and the EPA. This report examined the availability of controls for utility boilers and their applicability to utility boilers in the NESCAUM region.

For those utility boilers which cannot practicably employ low-NO<sub>x</sub> burners and overfire air, subchapter 19 allows for compliance through seasonal combustion of natural gas. Based upon data provided by members of the working group, the Department expects that utilities combusting natural gas seasonally will incur costs of \$1,300 to \$1,600 per ton of NO<sub>x</sub> removed.

Subchapter 19 also allows an alternative method of compliance for utility boilers which are to be shut down or repowered before May 15, 1999. The shutdown or repowering will substantially shorten the useful life of control technology installed in such utility boilers. Therefore, the capital costs of the control technology would be amortized over a much shorter period of time, and a much smaller quantity of NO<sub>x</sub> emissions would be avoided over that time. As a result, the cost per ton of NO<sub>x</sub> emissions would rise to a level beyond that which would be considered RACT.

Some requirements of the shutdown/repowering provision are more stringent than the requirements which would otherwise be applicable, but their application would be delayed. These requirements are no more stringent than what would be required for new sources under N.J.A.C. 7:27-8, to which the boiler will be subject as a result of the repowering; therefore, the proposed NO<sub>x</sub> RACT rules would not be adding any costs for repowering.

Utility boilers are required to install and use continuous emissions monitoring systems. The Department expects that the initial cost of these systems ranges from \$50,000 to \$75,000, and that ongoing operating costs average from \$10,000 to \$15,000 annually, depending upon the type of system purchased.

**Stationary gas turbines:** The Department expects that older stationary gas turbines can comply with the emission limits in subchapter 19 by injecting water or steam into the combustor (at an estimated cost of \$500.00 to \$2,000 per ton of NO<sub>x</sub> removed), or using dry low-NO<sub>x</sub> combustors (at an estimated cost of approximately \$50.00 to \$600.00 per ton of NO<sub>x</sub> removed).

Under N.J.A.C. 7:27-8, stationary gas turbines issued permits in the last six years were required to incorporate advances in the art of air pollution control at the time their permits were issued. The Department expects that these turbines are already meeting the emission limits established in subchapter 19, and therefore can comply without incurring additional costs.

Stationary gas turbines included in averaging plans will be required to install and use continuous emissions monitoring systems. The Department expects that the initial cost of these systems ranges from \$50,000 to \$75,000, and that ongoing operating costs average \$10,000 to \$15,000 annually.

**Averaging:** Owners and operators of equipment and source operations subject to subchapter 19 may be able to reduce the economic impact of subchapter 19 by complying with a Department-approved averaging plan. The Department expects that the cost of this method of compliance will be less than the cost of bringing each boiler and turbine into compliance with the emission limits which would otherwise be applicable.

The actual cost of complying with the averaging plan will differ for each plan, depending upon the number of averaging units involved and the extent of emission reductions required from each one. However, the proposed new rules will provide owners and operators with the flexibility to structure the plan in a manner which minimizes compliance costs.

The owner or operator will incur costs in preparing the averaging plan and obtaining the Department's approval. Much of the information required under the plan is already in the owner or operator's possession and can be supplied at negligible cost. However, an owner or operator will incur costs in obtaining the professional assistance needed to determine emission limits for each averaging unit which are realistic and will satisfy the requirements of the proposed new rules.

An owner or operator using an averaging plan must install continuous emissions monitoring systems (CEMS) on the averaging units included in the plan. The cost will vary depending upon the number and type of units in the plan. In addition, the cost will be reduced if the plan includes several identical units at the same facility, because the CEMS requirement for those identical units can be satisfied if the system is installed on only one of the units.

The proposed new rules include testing, recordkeeping and reporting requirements to demonstrate compliance with the averaging plan. The cost of complying with these requirements will vary, depending upon the number and type of averaging units included in the averaging plan.

**Non-utility boilers:** The proposed new rule establishes different requirements for three sizes of non-utility boilers: at least 20 million but less than 50 million BTUs per hour; at least 50 million but less than 100 million BTUs per hour; and at least 100 million BTUs per hour.

For the smallest class of regulated boilers, the Department expects that compliance costs will be minimal. The proposed new rules require only an annual tuning of the combustion process, at an estimated cost of \$500.00 to \$3,000 each year. Compliance with this requirement may actually result in a net economic benefit, because the tuning will reduce fuel costs through increased fuel efficiency.

For boilers in the 50 to 100 million BTU per hour range, compliance costs vary depending upon the type of fuel used in the boiler. The Department expects that most gas-fired boilers can comply with subchapter 19 without incurring costs for additional control measures. Boilers burning no. 2 fuel oil should be able to comply with subchapter 19 by installing low-NO<sub>x</sub> burners, at an estimated cost ranging from \$500.00 to \$2,000 per ton of NO<sub>x</sub> removed. Boilers burning other liquid fuels will most likely need to install low-NO<sub>x</sub> burners and recirculate flue gas, at an estimated cost ranging from \$1,500 to \$4,000 per ton of NO<sub>x</sub> removed.

The largest non-utility boilers are regulated in the same manner as utility boilers. The Department therefore believes that the compliance costs for the largest non-utility boilers will be similar to the compliance costs for utility boilers.

**Stationary internal combustion engines:** Subchapter 19 establishes different standards for rich-burn engines using gaseous fuel, lean-burn engines using gaseous fuel, and lean-burn engines using liquid fuel. The differing standards are based upon the use of different types of control measures which are suitable to each type of engine. For rich-burn engines using gaseous fuel, the estimated annual compliance cost ranges from \$500.00 to \$1,500 per ton of NO<sub>x</sub> removed. For lean-burn engines using gaseous fuel, the estimated annual compliance cost ranges from \$200.00 to \$500.00 per ton of NO<sub>x</sub> removed. For lean-burn engines using liquid fuel, the estimated annual compliance cost ranges from \$300.00 to \$1,000 per ton of NO<sub>x</sub> removed. These estimates are based upon data set forth in a draft study prepared at the direction of EPA.

**Asphalt plants:** The Department expects that the cost of compliance for the operators of asphalt plants will be minimal. Based on information provided by the New Jersey Asphalt Paving Association, the Department believes that the asphalt plant requirements under the proposed new rules generally track the current practices in this industry, with no need for additional control measures. The main difference between the regulatory requirements and current practice is the need to monitor NO<sub>x</sub> emissions in adjusting the plant's combustion process. The Department expects this requirement to add approximately \$1,000 to the cost of the adjustment.

**Glass furnaces:** The proposed new rules establish different requirements for furnaces manufacturing commercial container glass, specialty container glass and borosilicate recipe glass. The Department expects that for each type of furnace the cost per ton of NO<sub>x</sub> removed will be comparable to the costs of installing low-NO<sub>x</sub> burners and overfire air in utility boilers, discussed above.

As discussed in the Summary above, the control measures necessary for compliance with the proposed new rules generally cannot be implemented without rebricking of the glass furnace. Rebricking may cost several hundred thousand dollars. The proposed new rules postpone the date at which compliance becomes necessary, to make it more likely that

rebricking will occur in the ordinary course of the glass manufacturer's business, and less likely that rebricking will be undertaken for the sole purpose of compliance with the proposed new rules. Accordingly, the Department believes that the proposed new rules avoid unnecessary compliance costs for the glass manufacturing industry.

**Other major NO<sub>x</sub> facilities:** Major NO<sub>x</sub> facilities required to submit site-specific NO<sub>x</sub> control plans will incur compliance costs both in preparing the plan and complying with it once it is approved. The cost of preparing the plan will vary with the nature and number of items of equipment and source operations at the facility, not specifically regulated under other provisions of subchapter 19, which have the potential to emit more than 10 tons of NO<sub>x</sub> annually. The cost of complying with an approved plan will vary based on those same factors, and also upon the extent of the emission reductions required for each item of equipment or source operation covered under the plan.

#### Compliance costs—generally applicable

**Source emission testing:** Owners and operators of equipment and source operations regulated under subchapter 19 (other than those required to monitor emissions continuously) are required to conduct source emission testing beginning in 1995. The Department estimates that the cost of this testing is approximately \$5,000 per source.

**Sampling facilities:** Under N.J.A.C. 7:27-19.17(b), the owner or operator of equipment or a source operation subject to subchapter 19 may be required to provide temporary or permanent facilities from which the Department can conduct sampling. The Department expects that the cost to construct such facilities ranges from \$1,000 to \$5,000 for temporary facilities, and from \$10,000 to \$20,000 for permanent facilities, depending upon the location of the stack which is to be monitored.

**Alternative maximum allowable emission rates:** N.J.A.C. 7:27-19.13 establishes a procedure which will reduce the economic impact of subchapter 19 upon the owners and operators of certain equipment and source operations. In proposing this provision, the Department recognized that circumstances specific to a given source may make it unable to comply with the applicable emission limit at a reasonable cost, even though sources of that type generally are capable of doing so. Compliance with an alternative emission limit approved under this section will cost less than compliance with the limit which would otherwise be applicable under the rules. The extent of the savings depends upon the specific circumstances which justified the alternative limit.

**Penalties:** The proposed amendments to N.J.A.C. 7:27A-3.10 will have an adverse economic impact only upon persons who violate subchapter 19. The extent of the economic impact upon those persons will depend upon a variety of factors, including the nature of the violation and the extent of its effect or threatened effect upon public health, welfare and the environment.

The economic impact of the proposed amendments to N.J.A.C. 7:27A-3.5 will vary, depending upon the nature of the particular violation and the existence of mitigating or aggravating circumstances in connection with the violation. In the Department's experience, mitigating circumstances occur more frequently than aggravating circumstances; therefore, on the average it is more likely that the flexibility provided by the proposed amendments will reduce the economic impact of penalties for violations of the State's air pollution control laws and regulations.

#### Environmental Impact

N.J.A.C. 7:27-19 will have a positive environmental impact by reducing the emissions of NO<sub>x</sub>, thereby reducing the formation of ground-level ozone. The environmental impacts of elevated concentrations of ground-level ozone are discussed in the summary above, and in the proposal of the low emission vehicle program rules, 24 N.J.R. 1315 (April 6, 1992).

Reducing emissions of NO<sub>x</sub> also will have a positive environmental impact, because NO<sub>x</sub> in the ambient atmosphere is also a component of acid rain. Acid rain damages plants and trees, and injures aquatic life by acidifying lakes and streams. Because of the prevailing winds, NO<sub>x</sub> emitted in New Jersey affects not only New Jersey but states to its northeast as well. Accordingly, the reductions in NO<sub>x</sub> emissions resulting from compliance with these rules will help to alleviate the acid rain problem in New Jersey and the northeastern United States.

The Department expects that compliance with the proposed new rules will reduce emissions of NO<sub>x</sub> from stationary sources in New Jersey by approximately 30 percent. The following table sets forth the reductions expected from each type of source regulated under subchapter 19:

Category	Estimated NO <sub>x</sub> Reductions (tons per year)
Utility boilers	25,000
Non-utility boilers	5,000
Stationary gas turbines	500
Asphalt plants	10
Stationary internal combustion engines	5-10
Glass furnaces	160
Facility-specific RACT determinations	600

These estimates are based upon information concerning sources of NO<sub>x</sub> which the Department collected in its 1990 emissions inventory, and the reduction in emissions expected to result from compliance with subchapter 19 by those sources.

#### Regulatory Flexibility Analysis

The proposed new rules apply to several classes of businesses. The classes of businesses expressly subject to the proposed new rules include electric generating utilities, asphalt manufacturers and glass manufacturers. In addition, the proposed new rules regulate certain types of equipment and source operations (such as non-utility boilers, stationary internal combustion engines and other major NO<sub>x</sub> facilities) which are not limited in their use to particular types of businesses.

The proposed new rules do not establish exemptions or differing requirements for small businesses. The 1990 CAAA directs states to require RACT for all major sources of NO<sub>x</sub>, and does not authorize different treatment for small businesses. However, the Department notes that the applicability of the proposed new rules is limited to sources above a certain minimum size; small businesses are less likely to operate the larger sources which are subject to the proposed new rules.

The impact of the provisions of the proposed new rules specifically applicable to electric generating utilities, asphalt manufacturers, and glass manufacturers which may be owned or operated by small businesses is discussed below. A description of the impact of the more generally applicable provisions of the proposed new rules upon small businesses follows that discussion.

As discussed in the Economic Impact statement above, the Department expects that the cost of compliance with the requirements for asphalt plants will be minimal because the requirements of the proposed new rules are consistent with current practices in the industry. Accordingly, the Department has not established different requirements for small businesses which operate asphalt plants.

The Department believes that none of the glass manufacturing furnaces which would be subject to the proposed new rules are owned or operated by small businesses. As discussed in the Summary and the Economic Impact statement above, the Department has attempted to minimize unnecessary compliance costs for all glass manufacturing furnaces, by extending the compliance deadlines to avoid the need for rebricking solely to comply with the proposed new rules.

No electric generating utilities subject to subchapter 19 are small businesses.

The types of equipment and source operations subject to subchapter 19 and operated by small businesses (specifically, asphalt plants and the smallest class of regulated non-utility boilers) will normally achieve compliance through adjustments to their combustion processes. The manufacturer of the equipment or source operation generally does not recommend that the adjustment must be performed by a professional such as a licensed professional engineer. Accordingly, the Department does not believe that small businesses will be required to obtain professional services to comply with subchapter 19.

The proposed new rules also establish generally applicable recordkeeping requirements. These recordkeeping requirements involve data collected during combustion adjustments performed pursuant to N.J.A.C. 7:27-19.16, and source emission testing performed pursuant to N.J.A.C. 7:27-19.17. The same persons who perform the combustion adjustments and source emission testing would normally generate the records related to that work. Accordingly, small businesses subject to subchapter 19 will not need to obtain additional professional services to comply with the recordkeeping requirements. The Department does not expect the recordkeeping requirements to add materially to the cost of the combustion adjustments or source emission testing. The information to be contained in these records and reports is essential to enable the Department to monitor compliance with subchapter 19 and to establish the State's compliance with the requirements of the 1990 CAAA. According-

ly, the Department has not proposed reduced recordkeeping requirements for small businesses, or exempted them from these requirements.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

##### 7:27-19.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27-13 or 40 CFR 50.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" shall have the meaning assigned to it at N.J.A.C. 7:27-8.1.

"Alternative maximum allowable emission rate" means a maximum allowable emission rate, set by the Department on a site-specific basis pursuant to N.J.A.C. 7:27-19.13.

"Anthracite coal" means coal that is classified as anthracite according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77, incorporated herein by reference. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

"ASTM" means the American Society for Testing and Materials.

"Averaging" means complying with the requirements of this subchapter pursuant to N.J.A.C. 7:27-19.6, Emissions averaging.

"Averaging unit" means an individual source operation or item of equipment which is included in a designated set for the purpose of averaging pursuant to N.J.A.C. 7:27-19.6.

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Bituminous coal" means coal that is classified as bituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Borosilicate recipe" means a formula for making glass using 60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides.

"British thermal unit (BTU)" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and/or subbituminous coal.

"Coke" means a fused, cellular, porous substance that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by heating it in the absence of air or with a limited supply of air.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Commercial container glass" means clear or colored glass made of soda-lime recipe, which is formed into bottles, jars, ampoules or other containers, but does not include specialty container glass.

"Commercial fuel" means solid, liquid, or gaseous fuel which is ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Comparable demand day" means, for any day in which an averaging unit is not operating, a day on which demand for electric power was within 10 percent of the demand on the day in question.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Cyclone-fired boiler" means a boiler which combusts fuel in a horizontal water-cooled cylinder before releasing the combustion gases into the boiler.

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks or railroad tank cars. This term does not include marine tank vessels.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Designated set" means the averaging units which an owner or operator is authorized by the Department to include in an averaging plan pursuant to N.J.A.C. 7:27-19.6.

"Distillates of air" means helium (He), nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO<sub>2</sub>).

"Dry bottom utility boiler" means a utility boiler equipped with an ash disposal hopper bottom with sufficient cooling surface so that ash particles, when removed from the hopper, are in a solid state.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Electric generating utility" means any person who is subject to regulation as a public utility (as defined in N.J.S.A. 48:2-13) for its provision of electric power to another person.

"Emergency generator" means a stationary internal combustion engine or stationary gas turbine used to provide mechanical or electrical power only when the primary power source for a facility has been rendered inoperable by circumstances beyond the control of the owner or operator of the facility. The term does not include equipment used in circumstances other than emergencies, such as during high electric demand days. The term also does not include equipment which continues to be used after the primary power source either has become operable again or should have become operable had the owner or operator made reasonable efforts to repair it.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Face-fired boiler" means a furnace firing design in which the burners are mounted on one or more walls of the furnace.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. This term does not include delivery vessels.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;
2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;
3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and this chapter.

"Fixed capital cost" means the capital needed to provide all the depreciable components of a facility, item of equipment or source operation.

"Fuel" means combustible material burned in boilers, furnaces or other machinery to generate heat or other forms of energy. This term includes commercial fuel and non-commercial fuel.

"Fuel oil" means a liquid or liquefiable petroleum product burned for the generation of light, heat or power and derived directly or indirectly from crude oil.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Glass" means a hard, amorphous inorganic substance made by fusing silicates, and sometimes borates and phosphates, with certain basic oxides.

"Glass manufacturing furnace" means equipment which uses heat for the production of glass.

"Heat input" means heat derived from the combustion of fuel put into any boiler, furnace or other piece of equipment. This term does not include the heat from preheated combustion air, recirculated flue gases or exhaust gases from other sources.

"Higher heating value" means the total heat obtained from the complete combustion of a fuel which is at 60 degrees Fahrenheit when combustion begins, and the combustion products of which are cooled to 60 degrees Fahrenheit before the quantity of heat released is measured.

"Horsepower hour" means a unit of energy or work, equal to the work done by a mechanism with a power output of one horsepower over a period of one hour.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment. For the purposes of this subchapter, this term includes (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

"Lean-burn stationary internal combustion engine" means a stationary internal combustion engine in which the exhaust oxygen (O<sub>2</sub>) concentration is greater than four percent.

"Lignite" means coal that is classified as lignite A or B according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Liquid particles" means particles which have volume but are not of rigid shape.

"Major NO<sub>x</sub> facility" means any facility which has the potential to emit 25 or more tons of NO<sub>x</sub> per year.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

"Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the steam generating unit. This term is expressed in BTUs per hour, based on the higher heating value of the fuel.

"National Ambient Air Quality Standard (NAAQS)" means an ambient air quality standard promulgated at 40 CFR 50.

"Natural gas reburning" means a control technology where natural gas is injected into a boiler downstream of the main combustion zone in order to reduce the amount of NO<sub>x</sub> in the exhaust gas.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

"Nitrogen dioxide (NO<sub>2</sub>)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

"Nitrogen oxide (NO)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

"Nonbanded coal" means coal that is classified as nonbanded according to the ASTM Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coals, ASTM D 2796-77, incorporated herein by reference. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Non-commercial fuel" means solid, liquid or gaseous fuel which is not ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Oxides of nitrogen (NO<sub>x</sub>)" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60 Appendix A Method 7E.

"Particles" means any material, except uncombined water, which exists as liquid particles or solid particles at standard conditions.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

"Ppmv" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, including the number of parts contributed by water.

"Ppmvd" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, not including the number of parts contributed by water.

"Rebricking" means the replacement of damaged or worn bricks of a glass manufacturing furnace while the furnace does not contain molten glass.

"Reconstruction" means the replacement of components of an existing facility, item of equipment or source operation to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entirely new facility, item of equipment or source operation.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Repowering" means the replacement of the steam generator in a steam generating unit.

"Rich-burn stationary internal combustion engine" means a stationary internal combustion engine in which the exhaust oxygen (O<sub>2</sub>) concentration is no greater than four percent.

"Rotary dryer" means a cylindrical device, which rotates about an axis, through which hot gases are passed for the purpose of removing moisture from any solid.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Soda lime recipe" means a formula for making glass using 60 to 75 percent silicon dioxide and 25 to 40 percent other oxides and no lead oxides.

"Solid particles" means particles of rigid shape and definite volume.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

"Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Specialty container glass" means clear or colored glass made of soda-lime recipe, which is produced to meet the specifications of any standard set forth by The United States Pharmacopeia or The National Formulary, incorporated herein by reference, and which is used for pharmaceutical, cosmetic or scientific purposes. The referenced specifications can be obtained from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

"Stack or chimney" means a flue, conduit or opening designed, constructed, or used for the purpose of emitting any air contaminant into the outdoor atmosphere.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees Celsius and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts commercial fuel for the purpose of producing steam.

"Subbituminous coal" means coal that is classified as subbituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Tangential-fired boiler" means a furnace firing design where the burners are mounted at the corners of the furnace chamber.

"Testing" means a procedure for determining the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Use" means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

"Utility boiler" means a steam generating unit, all or some of the steam from which is used for generating electricity.

"Volatile organic compound," or "(VOC)," means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

#### Compounds

methane

ethane

methylene chloride (dichloromethane)

1,1,1-trichloroethane (methyl chloroform)

trichlorofluoromethane (CFC-11)

dichlorodifluoromethane (CFC-12)

trifluoromethane (FC-23)

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

chloropentafluoroethane (CFC-115)

chlorodifluoromethane (HCFC-22)

2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

pentafluoroethane (HFC-125)

1,1,2,2-tetrafluoroethane (HFC-134)

1,1,1,2-tetrafluoroethane (HFC-134a)

1,1-dichloro-1-fluoroethane (HCFC-141b)

1-chloro-1,1-difluoroethane (HCFC-142b)

1,1,1-trifluoroethane (HFC-143a)

1,1-difluoroethane (HFC-152a)

#### Classes of perfluorocarbons:

Cyclic, branched, or linear, completely fluorinated alkanes

Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wet bottom utility boiler" means a utility boiler in which the ash is removed from the boiler in a molten state.

#### 7:27-19.2 Purpose, scope and applicability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by oxides of nitrogen. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons of NO<sub>x</sub> per year, to implement reasonably available control technology (RACT) to control NO<sub>x</sub> emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility.

(b) The following types of equipment and source operations are subject to the provisions of this subchapter:

1. Any utility boiler;
2. Any non-utility boilers which has a maximum gross heat input rate of at least 20 million BTUs per hour;
3. Any stationary gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour;
4. Any stationary internal combustion engine capable of producing an output of more than 500 horsepower;
5. Any rotary dryer having the potential to emit at least 25 tons of NO<sub>x</sub> per year, and located at an asphalt plant;

6. Any glass manufacturing furnace producing commercial container glass, and having a maximum potential production rate of at least 14 tons of glass removed from the furnace per day;

7. Any glass manufacturing furnace producing specialty container glass, and having a maximum potential production rate of at least seven tons of glass removed from the furnace per day; and

8. Any glass manufacturing furnace producing borosilicate recipe glass, and having a maximum potential production rate of at least five tons of glass removed from the furnace per day.

(c) Any major NO<sub>x</sub> facility containing any equipment or source operation not specifically listed in (b) above, which equipment or source operation has the potential to emit more than 10 tons of NO<sub>x</sub> per year, is subject to the provisions of this subchapter.

(d) Notwithstanding the provisions of (b) and (c) above, any emergency generator which is subject to a Federally enforceable limitation or condition restricting its operations to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit at least 25 tons of NO<sub>x</sub> during its annual period of operations, is not subject to this subchapter.

(e) Notwithstanding the provisions of (b) and (c) above, this subchapter does not apply to any equipment or source operation for which the Administrator of EPA determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from such equipment or source operation.

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27-19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:

1. The facility's potential to emit NO<sub>x</sub> is less than 25 tons per year; and

2. The facility's potential to emit NO<sub>x</sub> on any calendar day from May 15 to September 15 is less than 137 pounds per day.

#### 7:27-19.3 General provisions

(a) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(b) The emission limitations specified in this subchapter become operative on May 31, 1995, except as provided in N.J.A.C. 7:27-19.4(c) and 19.10(d).

(c) For any alteration of equipment or source operations necessary to comply with the NO<sub>x</sub> emission limits in this subchapter, which alteration does not involve a reconstruction of the equipment or source operation, the use of control measures which incorporate current advances in the art of air pollution control for those types of control measures shall be deemed to satisfy the requirements of N.J.A.C. 7:27-8.8(d). For example, if a utility boiler achieves compliance with an emission limit under this subchapter by installing a low-NO<sub>x</sub> burner, the requirements of N.J.A.C. 7:27-8.8(d) are satisfied if the low-NO<sub>x</sub> burner installed incorporates current advances in the art of air pollution control for low-NO<sub>x</sub> burners.

(d) By (date which is three months after operative date of this subchapter), the owner or operator of any facility, equipment or source operation subject to this subchapter shall apply for permits for all equipment and control apparatus necessary for compliance with this subchapter.

#### 7:27-19.4 Utility boilers

(a) The owner or operator of a utility boiler shall cause it to emit NO<sub>x</sub> at a rate no greater than the applicable maximum allowable NO<sub>x</sub> emission rate specified in Table 1 below, unless the owner or operator of the utility boiler is:

1. Complying with (b) or (c) below in lieu of complying with the emission limits set forth in Table 1 below, under the Department's written approval obtained pursuant to N.J.A.C. 7:27-19.14; or

2. Complying with an averaging plan submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 1

Maximum Allowable NO<sub>x</sub> Emission Rates for Utility Boilers  
(pounds per million BTU)

Fuel/Boiler Type	Firing Method		
	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0 <sup>1</sup>	1.0 <sup>1</sup>	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

<sup>1</sup>Except as provided in (b) below.

(b) In lieu of complying with the emission limits set forth in (a) above, the owner or operator of a coal-fired, wet-bottom utility boiler which uses the tangential or face firing method may comply with the requirements of this subsection, which provides for seasonal combustion of natural gas. The owner or operator electing to comply with this subsection shall satisfy all of the following requirements:

1. Before July 1, 1994, submit to the Department an application for approval of seasonal natural gas combustion, pursuant to N.J.A.C. 7:27-19.14(a), (b) and (c);

2. Before May 1, 1995, obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27-19.14, and maintain that approval in effect;

3. Comply with all conditions of the Department's written approval;

4. Beginning in calendar year 1995, comply with the following requirements:

i. From May 1 to September 30 of each year, combust only natural gas in the utility boiler;

ii. Operate the utility boiler so that it emits NO<sub>x</sub> at an average rate for each calendar day no greater than one pound of NO<sub>x</sub> per million BTUs; and

5. For every calendar year beginning in 1995, operate the utility boiler so that the average NO<sub>x</sub> emission rate over the entire calendar year does not exceed 1.5 pounds of NO<sub>x</sub> per million BTUs.

(c) In lieu of complying with the emission limits set forth in (a) above, the owner or operator of a utility boiler which is to be shut down or repowered before April 30, 1999 may comply with the requirements of this subsection. The owner or operator electing to comply with this subsection shall satisfy all of the following requirements:

1. Before May 1 of each calendar year beginning with 1995, adjust the combustion process in accordance with the general procedures set forth at N.J.A.C. 7:27-19.16;

2. Before January 1, 1995, enter into a Federally enforceable agreement with the Department which prohibits the continued operation of the utility boiler after April 30, 1999, unless its repowering is completed before that date and it meets the emission limitations specified in Table 2 below thereafter;

3. Before July 1, 1994, submit to the Department an application for approval of compliance under this subsection, pursuant to N.J.A.C. 7:27-19.14(a), (b) and (c), and include in the application specific procedures and schedules for adjustment of the boiler's combustion process in addition to the general procedures set forth in N.J.A.C. 7:27-19.16, and a proposed schedule of milestones for obtaining permits and purchasing equipment for the repowering of the boiler;

4. Obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27-19.14, including, without limitation, approval of the combustion adjustment procedures and schedules based upon a determination that such procedures and schedules will minimize total emissions of NO<sub>x</sub>, VOC and CO to the extent practicable using procedures and schedules which are technologically and economically feasible;

5. Maintain the Department's approval in effect; and

6. Comply with all conditions of the Department's written approval, and meet all milestones in that approval (such as for permit applications and permit approvals).

TABLE 2

Maximum Allowable NO<sub>x</sub> Emission Rates for Utility Boilers Which Have Been Repowered (pounds per million BTU)

Fuel/Boiler Type	Firing Method		
	Tangential	Face	Cyclone
Coal—Wet Bottom	0.2	0.2	0.2
Coal—Dry Bottom	0.2	0.2	**
Oil and/or Gas	0.1	0.1	0.1
Gas Only	0.1	0.1	**

(d) The owner or operator of any utility boiler subject to this subchapter shall install on the boiler a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18.

7:27-19.5 Stationary gas turbines

(a) No stationary simple cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO<sub>x</sub> at a rate greater than the applicable maximum allowable NO<sub>x</sub> emission rate specified in Table 3 below, unless the owner or operator is complying with an averaging plan including that turbine which has been submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 3

Maximum Allowable NO<sub>x</sub> Emission Rate for Simple Cycle Gas Turbines (Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.4
Gas	0.2

(b) No combined cycle gas turbine or regenerative cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO<sub>x</sub> at a rate greater than the applicable maximum allowable NO<sub>x</sub> emission rate specified in Table 4 below, unless the owner or operator is complying with an average plan including that turbine which has been submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 4

Maximum Allowable NO<sub>x</sub> Emission Rate for Combined Cycle Gas Turbines (Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.35
Gas	0.15

(c) In lieu of complying with the emission limits set forth in (a) and (b) above, the owner or operator of a stationary gas turbine may elect to comply with the requirements of this subsection. The owner or operator of the turbine shall satisfy all of the requirements listed in (c)1 through 6 below.

1. The owner or operator applies for and obtains the Department's written approval, in accordance with N.J.A.C. 7:27-19.14 and based on the standards in N.J.A.C. 7:27-19.14 and (c)2 and 3 below;

2. The owner or operator establishes that there is an insufficient supply of water to the turbine suitable for NO<sub>x</sub> emission control, due to either of the following circumstances beyond the control of the owner or operator:

i. A legally enforceable limit on the amount of water which the owner or operator's facility may use; or

ii. The need to provide for an alternate supply of water, because the existing supply is insufficiently filtered and de-ionized to be suitable for injection;

3. The owner or operator establishes there is no commercially available dry low-NO<sub>x</sub> combustor suitable for use in the specific stationary gas turbine;

4. The owner or operator maintains the Department's approval in effect;

5. The owner or operator complies with all conditions of the Department's approval; and

6. The owner or operator annually adjusts the combustion process of the turbine in accordance with N.J.A.C. 7:27-19.16, before May 1 of each year.

(d) In reducing the NO<sub>x</sub> emission rate to the rate required under (a) or (b) above, the owner or operator of a stationary gas turbine not approved under (c) above shall not allow the CO emission rate to exceed 50 ppmvd at 15 percent O<sub>2</sub> at any operating condition.

7:27-19.6 Emissions averaging

(a) The Department may authorize an owner or operator to comply with an averaging plan approved by the Department pursuant to this section. An owner or operator in compliance with such an approved averaging plan is not required to comply with any emission limit set forth in this subchapter which would be applicable in the absence of an approved averaging plan.

(b) The owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written request to the Department at the address set forth in (k) below. The owner or operator shall include the following information in the request:

1. Information sufficient to identify each averaging unit, including its location, a brief description of the unit (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the applicant;

2. The maximum gross heat input rate of each averaging unit, expressed in BTUs per hour;

3. The type of fuel or fuels combusted in each averaging unit;

4. The maximum allowable NO<sub>x</sub> emission rate which the owner or operator proposes to impose upon each averaging unit, expressed in pounds per million BTU;

5. A demonstration that in operating at their maximum heat input rates, all of the averaging units together would satisfy the following equation:

$$TPEE \leq TP AE$$

where:

i. TPEE means total peak estimated emissions, and is equal to the sum of the peak estimated emissions for each averaging unit. The peak estimated emissions for each averaging unit equals the maximum emission rate listed in (b)4 above for that averaging unit, multiplied by the maximum heat input rate listed in (b)2 above for that averaging unit; and

ii. TP AE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit. The peak allowable emissions for each averaging unit equals the applicable NO<sub>x</sub> emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 for that averaging unit, multiplied by the maximum heat input rate listed in (b)2 above for that averaging unit;

6. The method to be used to measure the actual NO<sub>x</sub> emission rate of each averaging unit;

7. The name and phone number of the individual responsible for the recordkeeping required under (g) below; and

8. Any other information which the Department requests, which is reasonably necessary to enable it to determine whether the averaging units designated by the owner or operator will comply with the requirements of this section.

(c) The Department shall approve an averaging plan only if the following requirements are satisfied:

1. Each averaging unit can satisfy the maximum allowable NO<sub>x</sub> emission rate which the owner or operator proposed under (b)4 above for that averaging unit;

2. The request for authorization satisfies all requirements of (b) above;

3. The owner and operator of the averaging units to be included in the designated set enter into a Federally enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits and/or operating certificates), requiring any averaging unit for which the NO<sub>x</sub> emission rate specified under (b)4 above is less than the applicable maximum allowable NO<sub>x</sub> emission rate specified at N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 to continue to emit NO<sub>x</sub> at the rate specified under (b)4 above; and

4. Emissions from any averaging unit exceeding the applicable NO<sub>x</sub> emission limit under N.J.A.C. 7:27-19.4 or 19.5 will not cause or materially contribute to an exceedance of the NAAQS for nitrogen dioxide or any other environmental impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. The actual NO<sub>x</sub> emissions from each averaging unit in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the maximum allowable NO<sub>x</sub> emission rate specified in (b)4 above for that averaging unit; and

2. The sum of the actual NO<sub>x</sub> emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO<sub>x</sub> emissions for all averaging units in the designated set. The allowable NO<sub>x</sub> emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable NO}_x \text{ emissions} = H \times AL$$

where:

i. H means the actual heat input to the averaging unit during the appropriate time interval specified in (f) below. The heat input is expressed in millions of BTUs, based on the higher heating value of the fuel burned; and

ii. AL means the applicable NO<sub>x</sub> emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 for that averaging unit, expressed in pounds of NO<sub>x</sub> per million BTUs.

(e) The owner or operator of the designated set shall calculate the actual NO<sub>x</sub> emissions of each averaging unit using data from a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18. The owner or operator may comply with this requirement in accordance with a plan for limited installation of continuous emissions monitoring systems approved by the Department under N.J.A.C. 7:27-19.18(d).

(f) The owner or operator shall demonstrate compliance with this section according to the schedule set forth in (f)1 and 2 below.

1. The owner or operator shall determine whether the operations of the designated set comply with this section for each calendar day during the period beginning May 15 and ending September 15 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO<sub>x</sub> emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation.

2. The owner or operator shall determine whether the operations of the designated set comply with this section for the 30-day period beginning September 16 of each year, and the 30-day period beginning on each subsequent day through April 15 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO<sub>x</sub> emissions for each averaging unit over the entire 30-day period. The owner or operator shall perform the calculations and make a record of them by the fifteenth day of each month, for all 30-day periods ending in the preceding month.

(g) The owner or operator of a designated set shall maintain the records listed below for five years from the date on which each

record was made. The owner or operator shall maintain such records in a permanently bound log book, in a format approved in writing by the Department and acceptable to the EPA. The owner or operator shall maintain the following records:

1. The unique identifier for each averaging unit included in the designated set as specified in (b)1 above;

2. The time period for which the data is being recorded;

3. The date upon which the data was recorded;

4. The amount, type and higher heating value of the fuel(s) consumed over the subject time period;

5. The amount of NO<sub>x</sub> (expressed in pounds or tons) emitted by each averaging unit over the subject time period;

6. Whether the amount exceeds the allowable rate for the averaging unit specified under (b)4 above;

7. The sum of the amounts listed in (g)5 above for all averaging units;

8. The allowable NO<sub>x</sub> emissions calculated pursuant to (d)2 above; and

9. Any other information required to be maintained as a condition of approval granted pursuant to (b) above.

(h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (1) below. The owner or operator shall include the following information in the quarterly report:

1. The information listed in (g)2 and 3 above;

2. In the report for the quarter ending March 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter;

3. In the report for the quarter ending June 30:

i. The compliance determination required under (f)2 above for each 30-day period ending on a calendar day from April 1 through May 14, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from May 15 through June 30, inclusive;

4. In the report for the quarter ending September 30, the compliance determination required under (f)1 above for each calendar day from July 1 through September 15; and

5. In the report for the quarter ending December 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter.

(i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the electric generating utility shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified in (l) below for the county in which the averaging unit with the highest NO<sub>x</sub> emission rate is located. The owner or operator shall include the following information in the notification:

1. The name of the owner or operator;

2. The name and telephone number of the person specified in (b)7 above;

3. All information required to be recorded under (h) above;

4. A statement of the reason(s) for the non-compliance, if known; and

5. Certification of the notification, in accordance with N.J.A.C. 7:27-8.23.

(j) An electric generating utility operating a utility boiler or stationary gas turbine which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the utility's control, and for which the NO<sub>x</sub> emission rate specified under (b)4 above is less than the applicable maximum allowable NO<sub>x</sub> emission rate under N.J.A.C. 7:27-19.4 or 19.5, shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written notice to the Department. In the written notice, the owner or operator shall identify the unit

which is or was not operating, and state why it is or was not operating;

2. If circumstances beyond the control of the owner or operator make it impracticable either to repair the averaging unit within 15 calendar days after it ceased operating, or to comply with the averaging plan without operating the unit (for example, through reducing the operations of another unit and purchasing electric power from another source), include in the notice described in (j)1 above an explanation of those circumstances and an estimate of the time required to repair the averaging unit; and

3. In determining whether the designated set is in compliance with (d)2 above, assume that the NO<sub>x</sub> emissions and heat input for the non-operational averaging unit for each of the first 15 days of non-operation (or such longer period, not to exceed six months, as the Department determines is necessary to repair the averaging unit based on the information submitted under (j)2 above) are equal to the actual emissions and heat input for that unit on the most recent comparable demand day. For each day after the end of the period described above, assume that the NO<sub>x</sub> emissions and heat input for the non-operational averaging unit are zero.

(k) A person submitting a request for authorization of an averaging plan shall send the request to the Department at the following address:

Chief, Bureau of Air Quality Engineering  
 Department of Environmental Protection  
 and Energy  
 401 East State Street  
 CN 027  
 Trenton, New Jersey 08625-0027

(l) A person required to provide notice to the Department under (i) above shall send the notice to the applicable address listed in (l)1 through 4 below.

1. If the averaging unit with the highest NO<sub>x</sub> emission limit is located in Burlington County, Mercer County, Middlesex County, Monmouth County or Ocean County:

Central Regional Office  
 Horizon Center  
 CN 407  
 Robbinsville, NJ 08625-0407  
 Fax: (609) 584-4220

2. If the averaging unit with the highest NO<sub>x</sub> emission limit is located in Bergen County, Essex County, Hudson County or Union County:

Metro Regional Office  
 2 Babcock Place  
 West Orange, NJ 07052-5504  
 Fax: (201) 669-3907

3. If the averaging unit with the highest NO<sub>x</sub> emission limit is located in Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County:

Northern Regional Office  
 1259 Route 46 East  
 Parsippany, NJ 07054-4191  
 Fax: (201) 299-7719

4. If the averaging unit with the highest NO<sub>x</sub> emission limit is located in Atlantic County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County:

Southern Regional Office  
 20 East Celementon Road  
 3rd Floor, Suite 302  
 Gibbsboro, NJ 08525-1175  
 Fax: (609) 346-8051

7:27-19.7 Non-utility boilers

(a) Beginning in calendar year 1994, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 20 million but less than 50 million BTUs per hour shall annually adjust the combustion process of the boiler in accordance with N.J.A.C. 7:27-19.16 before May 1 of each year.

(b) Beginning on May 31, 1995, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 50 million but less than 100 million BTUs per hour shall cause the

boiler to emit NO<sub>x</sub> at a rate no greater than the applicable maximum allowable NO<sub>x</sub> emission rate specified in Table 5 below.

TABLE 5  
 Maximum Allowable NO<sub>x</sub> Emission Rates for  
 Non-utility Boilers Subject to N.J.A.C. 7:27-19.1(b)  
 (pounds per million BTU)

Fuel/Boiler Type	Firing Method		
	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.55
Coal—Dry Bottom	0.38	0.43	0.55
#2 Fuel Oil	0.12	0.12	0.12
Other Liquid Fuels	0.3	0.3	0.3
Natural Gas	0.1	0.1	0.1

(c) Beginning on May 31, 1995, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 100 million BTUs per hour shall cause the boiler to emit NO<sub>x</sub> at a rate no greater than the applicable maximum allowable NO<sub>x</sub> emission rate specified in Table 6 below.

TABLE 6  
 Maximum Allowable NO<sub>x</sub> Emission Rates for  
 Non-utility Boilers Subject to N.J.A.C. 7:27-19.7(c)  
 (pounds per million BTU)

Fuel/Boiler Type	Firing Method		
	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

(d) The owner or operator of any non-utility boiler with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27-19.18.

7:27-19.8 Stationary internal combustion engines

(a) The owner or operator of a rich-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 1.5 grams of NO<sub>x</sub> per horsepower hour.

(b) The owner or operator of a lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 2.5 grams of NO<sub>x</sub> per horsepower hour.

(c) The owner or operator of any lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by liquid fuel, shall cause it to emit no more than eight grams of NO<sub>x</sub> per horsepower hour.

7:27-19.9 Asphalt plants

(a) The owner or operator of a batch type or drum mix asphalt plant which has the potential to emit at least 25 tons per year of NO<sub>x</sub> shall cause it to emit NO<sub>x</sub> at a rate no greater than 200 ppmvd at seven percent O<sub>2</sub>.

(b) At least annually, the owner or operator of an asphalt plant subject to (a) above shall adjust the combustion process of the aggregate dryer in accordance with N.J.A.C. 7:27-19.16.

7:27-19.10 Glass manufacturing furnaces

(a) The owner or operator of any commercial container glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)6 shall cause the furnace to emit no more than 5.5 pounds of NO<sub>x</sub> per ton of glass removed from the furnace.

(b) The owner or operator of any specialty container glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)7 shall cause the furnace to emit no more than 11 pounds of NO<sub>x</sub> per ton of glass removed from the furnace.

(c) The owner or operator of a borosilicate recipe glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)8 shall:

1. By January 1, 1994, conduct source emissions testing in accordance with N.J.A.C. 7:27-19.17 to determine the baseline NO<sub>x</sub> emission rate from the furnace;

2. By July 1, 1994, submit one of the following to the Department:

i. A written plan detailing how the NO<sub>x</sub> emission rate from the furnace will be reduced by 30 percent from the baseline emission rate measured in (c)1 above; or

ii. A demonstration that the NO<sub>x</sub> emissions from the furnace, as measured by the source emissions testing performed under (c)1 above, are at least 30 percent less than the uncontrolled NO<sub>x</sub> emissions from the furnace as of a date no earlier than November 15, 1990;

3. Before the date specified in (d) below, implement the plan detailed in (c)2i above (unless the owner or operator has submitted the demonstration described in (c)2ii above); and

4. Beginning on the date specified in (d) below, cause the furnace to emit NO<sub>x</sub> at a rate no greater than the reduced rate described in (c)2i above, or to continue to emit NO<sub>x</sub> at a rate no greater than the rate demonstrated under (c)2ii above.

(d) A glass manufacturing furnace subject to this subchapter shall comply with the requirements of (a), (b), (c)3 and (c)4 above beginning on the earlier of the following:

1. The first date after [insert operative date] on which rebricking of the furnace is completed; or

2. May 1, 1997.

(e) Beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to this subchapter shall adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27-19.17 before May 1 of each calendar year.

7:27-19.11 and 19.12 (Reserved)

#### 7:27-19.13 Facility-specific NO<sub>x</sub> emissions limits

(a) This section establishes procedures and standards for the establishment of facility-specific NO<sub>x</sub> emissions limits in the following circumstances:

1. If a major NO<sub>x</sub> facility contains any source operation or item of equipment not listed in N.J.A.C. 7:27-19.2(b) which has the potential to emit more than 10 tons of NO<sub>x</sub> per year, except as provided in (o) below; and

2. If the owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) seeks approval of an alternative maximum allowable emission rate, which would apply to the equipment or source operation in lieu of the emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of a major NO<sub>x</sub> facility described in (a)1 above shall obtain the Department's written approval of a facility-specific NO<sub>x</sub> control plan in accordance with this section. The owner or operator shall submit to the Department in writing a proposed NO<sub>x</sub> control plan for the facility by [insert date which is three months after operative date of this subchapter]. In the proposed NO<sub>x</sub> control plan, the owner or operator shall include:

1. A list of each source operation or item of equipment at the facility which has the potential to emit more than 10 tons of NO<sub>x</sub> per year and is not listed in N.J.A.C. 7:27-19.2(b). In the list, the owner or operator shall briefly describe the source operation or item of equipment, and list its permit number and any other identifying numbers; and

2. The information listed in (d) below.

(c) The owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) may request approval of an alternative maximum allowable emission rate in accordance with this section. In the request, the owner or operator shall include:

1. A brief description of the equipment or source operation which is the subject of the request, and its permit number and any other identifying numbers;

2. A demonstration that the source operation or item of equipment is not able to comply with this subchapter through any alternative means of compliance established under this subchapter (for example, through seasonal combustion of natural gas pursuant to N.J.A.C. 7:27-19.4(b), or through compliance with an averaging plan under N.J.A.C. 7:27-19.6); and

3. The information listed in (d) below.

(d) In addition to the information required under (b) or (c) above, as applicable, the owner or operator shall include the following information in a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate:

1. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a list of all NO<sub>x</sub> control technologies available for use with the equipment or source operation;

2. An analysis of the technological feasibility of installing and operating each control technology identified in (d)1 above;

3. For each control technology which is technologically feasible to install and operate, an estimate of the cost of installation and operation;

4. An estimate of the remaining useful life of each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable;

5. An estimate of the reduction in NO<sub>x</sub> emissions attainable through the use of each control technology which is technologically feasible to install and operate;

6. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, the NO<sub>x</sub> control technology or technologies which the owner or operator proposes to employ;

7. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a proposed NO<sub>x</sub> emission limit;

8. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (g) below; and

9. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(e) Within 30 days after receiving a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate, the Department shall notify the owner or operator in writing whether the submission includes all of the information required under (d) above and under (b) or (c) above, as applicable.

1. If the proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate is incomplete, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the proposed plan or request complete, and a time by which the owner or operator must submit a complete proposed plan or request.

2. The Department may refrain from reviewing the substance of the proposed plan or request (or any part thereof) until it is complete.

3. The owner or operator shall submit a complete proposed plan or request within the time stated in the Department's notification.

4. If the owner or operator fails to submit a complete proposed plan within the time stated in the Department's notification, the failure is a violation of this subchapter.

5. If the owner or operator fails to submit a complete request for an alternative maximum allowable emission rate within the time stated in the Department's notification, the Department may deny the request.

(f) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which the major NO<sub>x</sub> facility is located.

(g) Within six months after receiving a complete proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate, the Department shall approve, approve and modify, or disapprove the proposed plan or request and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above and under (b) or (c) above, as applicable;

2. The proposed plan or request considers all control technologies available for the control of NO<sub>x</sub> emissions from the type of equipment or source operation in question;

3. For any control technologies described in (g)2 above which the owner or operator does not propose to use on the equipment or

source operation, the proposed plan or request demonstrates that the control technology:

- i. Would be ineffective in controlling NO<sub>x</sub> emissions from the equipment or source operation;
- ii. Is unsuitable for use in the equipment or source operation, or duplicative of control technology which the plan proposes to use;
- iii. Would carry costs disproportionate to the improvement in the reduction of the NO<sub>x</sub> emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO<sub>x</sub> emissions which the control technology is likely to achieve over its useful life; or
- iv. Would carry costs disproportionate to the costs incurred for the control of NO<sub>x</sub> emissions from the same type of equipment or source operations used by other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation and item of equipment is the lowest rate which can practically be achieved at a cost within the limits described in (g)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. Emissions at each proposed limit will not cause or materially contribute to an exceedance of the NAAQS for nitrogen dioxide or any other environmental impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.

(h) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of equipment or source operations at the subject facility necessary to minimize any adverse impact upon human, health welfare and the environment.

(i) Before altering any equipment or source operation which is included in an approved NO<sub>x</sub> control plan, the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the NO<sub>x</sub> control plan, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the NO<sub>x</sub> control plan to reflect the alteration, in a manner satisfying the criteria set forth in (g) above; and

2. Apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(j) Except as provided in (j)1 below, an approval of an alternative maximum allowable emission rate is void upon the alteration of equipment or source operation which is subject to the rate.

1. The Department may approve continued application of the existing alternative maximum allowable emission rate if the proposed alteration does not materially affect the basis of the Department's original approval.

2. The owner or operator may apply for and obtain the Department's approval of a revised alternative maximum allowable emission rate pursuant to this section, reflecting the proposed alteration.

3. Before altering any equipment or source operation which is subject to the alternative rate, the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(k) The Department may revoke an approval of a NO<sub>x</sub> control plan by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;
2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the proposed plan or any supporting documentation;
3. EPA denies approval of the proposed NO<sub>x</sub> plan as a revision to the State Implementation Plan; or
4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

(l) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department denied the person's application for approval of a plan or alternative rate under this section;
2. The person seeks to contest one or more conditions of the Department's approval imposed under (h) above; or
3. The Department has revoked the person's approval pursuant to (k)1, 2 or 4 above.

(m) The owner or operator of a facility described in (a)1 above shall implement the NO<sub>x</sub> control plan (including, without limitation, complying with the emission limits set forth in the plan) approved by the Department by May 31, 1995, and maintain compliance with the plan and all conditions of the Department's approval thereafter. The owner or operator of a source operation or item of equipment for which the Department has approved an alternative maximum allowable emission rate shall cause it to emit NO<sub>x</sub> at a rate no greater than the approved alternative rate.

(n) The owner or operator submitting a proposed NO<sub>x</sub> control plan or request for an alternative maximum allowable emission rate shall send it to the Department at the following address:

Chief, Bureau of Air Quality Engineering  
Department of Environmental Protection and Energy  
401 East State Street  
CN 027  
Trenton, New Jersey 08625-0027

(o) A major NO<sub>x</sub> facility satisfies the requirements of this subchapter if its only equipment or source operations with the potential to emit 10 tons or more of NO<sub>x</sub> per year are non-utility boilers. The owner or operator of such a facility is not required to submit a facility-specific NO<sub>x</sub> control plan for the facility.

7:27-19.14 Procedures for obtaining approvals under this subchapter

(a) This section establishes the procedure for obtaining the Department's approval of any of the following:

1. An exemption from this subchapter, pursuant to N.J.A.C. 7:27-19.2(f);

2. Compliance with the requirements of N.J.A.C. 7:27-19.4(b) for utility boilers which will combust natural gas seasonally;

3. Compliance with the requirements of N.J.A.C. 7:27-19.4(c) for utility boilers to be shut down or repowered; or

4. Compliance with the requirements of N.J.A.C. 7:27-19.4(c) for a stationary gas turbine.

(b) The person seeking an approval listed in (a) above shall submit a written application to the Department at the following address:

Chief, Bureau of Air Quality Engineering  
Air Quality Regulation  
Department of Environmental Protection and Energy  
401 East State Street  
CN 027  
Trenton, NJ 08625-0027

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1. Any information required under N.J.A.C. 7:27-19.2(f), 19.4(b), 19.4(c), 19.5(c) or 19.18(c), as applicable.

2. The name, address and telephone number of the owner and the operator of the equipment or source operation which is the subject of the application;

3. The street address of the facility at which the subject equipment or source operation is located;

4. The type of equipment or source operation which is the subject of the application, and its make, model and serial number;

5. For requests submitted under N.J.A.C. 7:27-19.5(c), a proposed maximum allowable emission rate for the subject stationary gas turbine;

6. A certification of the application, satisfying the requirements of N.J.A.C. 7:27-8.24; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above.

1. If the application is incomplete, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application.

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete.

3. The applicant shall submit a complete application within the time stated in the Department's notification.

4. If the applicant fails to submit a complete application within the time stated in the Department's notification, the Department may reject the application.

(e) Within six months after receiving a complete application, the Department shall notify the applicant of its decision on the application. The Department shall grant its approval under this section only if the applicant satisfies all eligibility requirements set forth in N.J.A.C. 7:27-19.4(b), 19.4(c) or 19.5(c), as applicable.

(f) As a condition of an approval issued under this section (other than an approval of an exemption pursuant to N.J.A.C. 7:27-19.2(f)), the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) An approval issued under this section is void upon the alteration of equipment or source operation which is the subject of the approval.

1. The owner or operator may apply for and obtain the Department's approval of a revised approval pursuant to this section, reflecting the proposed alteration.

2. Before altering any equipment or source operation which is subject to the alternative rate, the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The Department may revoke an approval issued under this section, by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date of the approval, the subject equipment or source operations are able to comply with the applicable section of this subchapter. In revoking an approval pursuant to this paragraph, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to comply with the applicable section of this subchapter; or

4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to public health, welfare or the environment.

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for an approval under this section;

2. The person seeks to contest conditions of the approval imposed under (f) above; or

3. The Department has revoked the person's approval pursuant to (h) above.

(j) If an item of equipment or a source operation has exceeded the maximum allowable emission rate applicable under this subchapter without an approval pursuant to this section, it shall not be a defense to an enforcement action that an application for an approval is pending.

#### 7:27-19.15 Procedures and deadlines for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the

equipment or source operation, or pursuant to (a)2 below if no such system has been installed.

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, compliance with the limit is based upon the average of emissions over one calendar day, provided, however, that compliance is based upon the average of emissions over a 30 calendar day period when authorized under N.J.A.C. 7:27-19.6(f)2.

2. If no continuous emissions monitoring system has been installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27-19.17.

(b) For any equipment or source operation subject to this subchapter which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(c) For any equipment or source operation subject to this subchapter which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a) or (b) above within 180 days from the date on which the source commences operation, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(d) An exceedance of any applicable NO<sub>x</sub> emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a), (b), or (c) above or otherwise, is a violation of this subchapter.

#### 7:27-19.16 Adjusting combustion processes

(a) When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall:

1. Inspect the burner, and clean or replace any components of the burner as necessary to minimize total emissions NO<sub>x</sub> and CO;

2. Inspect the flame pattern and make any adjustments to the burner necessary to optimize the flame pattern; and

3. Inspect the system controlling the air-to-fuel ratio, and ensure that it is correctly calibrated and functioning properly.

(b) An exceedance of an emission limit which occurs during an adjustment of the combustion process under (a)2 or 3 above, as a result of the adjustment, is not a violation of this chapter. Before the combustion adjustment begins, and after it has been completed, the maximum emission rate of any contaminant shall not exceed the maximum allowable emission rate applicable under this chapter or under an applicable certificate issued pursuant to N.J.A.C. 7:27-8.

(c) The owner or operator of the adjusted equipment or source operation shall record each adjustment conducted under (a) above in a permanently bound log book or other format approved in writing by the Department, containing the following information for each adjustment:

1. The date of the adjustment and the times at which it began and ended;

2. The name, title and affiliation of the person who made the adjustment;

3. The NO<sub>x</sub> emission rate, in either ppmv or ppmvd, after each adjustment was made;

4. The CO emission rate, in either ppmv or ppmvd, after each adjustment was made;

5. The concentration of O<sub>2</sub> at which the emission rates under (c)3 and 4 were measured; and

6. Any other information which the Department or the EPA has required as a condition of approval of any permit or certificate issued for the equipment or source operation.

#### 7:27-19.17 Source emissions testing

(a) Upon request by the Department or EPA, the owner or operator of any equipment or source operation subject to this subchapter shall:

1. Conduct tests to determine the emissions from such equipment or source operation to determine the nature and quantity of VOC, NO<sub>x</sub>, or CO being emitted into the outdoor atmosphere;

2. Provide information concerning the location, rate, duration, concentration, and properties of the emissions of NO<sub>x</sub>, CO or VOC from such equipment or source operations, and such other information as may be reasonably necessary to assess air emissions;

3. Provide information concerning the rate at which the equipment or source operation is combusting fuel during tests conducted under (a)1 above, and the maximum gross heat input value of the equipment or source operation; and

4. Provide the log prepared under (e) below, or any part thereof requested by EPA or the Department.

(b) Upon the Department's request, the owner or operator of any equipment or source operation subject to this subchapter shall provide the Department with temporary or permanent sampling facilities satisfying the requirements of N.J.A.C. 7:27B-1.4. The owner or operator shall construct such facilities in accordance with all applicable laws, ordinances and regulations, including those which regulate construction practices.

(c) During any testing conducted pursuant to this section, the equipment or source operation, and all components connected, attached to, or serving the equipment, shall be used and operated under normal routine operating conditions, under maximum capacity operating conditions, or under such other conditions within the capacity of the equipment as the Department or EPA requests.

(d) A person conducting testing pursuant to this section shall use the test method which the Department specifies, based upon the circumstances specific to the facility or to the equipment or source operation being tested. The Department shall specify one of the following methods:

1. The methods set forth at 40 CFR 60, Appendix A, method 7E; or

2. Any other method which EPA and the Department have approved in writing. If EPA approves a method, and the Department determines that the method yields results at least as consistent as the appropriate method listed under (d)1 above, and which has no greater tendency to understate emissions, the Department shall approve the method.

(e) The owner or operator of the tested equipment or source operation shall record any test data collected under this section, and maintain it for at least five years after the date on which the testing was conducted.

#### 7:27-19.18 Continuous emissions monitoring

(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Obtain a system approved in advance by the Department. The Department shall approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, Performance Specification Tests No. 2, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in compliance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the EPA regulations listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in compliance with the manufacturer's specifications; and

5. Continuously monitor and record NO<sub>x</sub> emissions from the equipment or source operation subject to the monitoring requirement.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment of a given type at a facility may satisfy this requirement without installing such a system on every unit of such equipment at the facility, in accordance with a plan approved by the Department.

(c) A person seeking approval of a plan for limited installation of continuous emissions monitoring systems shall submit a written application to the Department. The applicant shall include in the

application all of the information required under N.J.A.C. 7:27-19.14(c)2, 3 and 4. The applicant shall also include in the application a plan containing the following information for each item of equipment or source operation for which a continuous emissions monitoring system is required under this subchapter:

1. The make and model of the equipment or source operation;

2. The facility at which the equipment or source operation is used;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application;

5. A statement that the applicant proposes to install or not install a continuous emissions monitoring system; and

6. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above.

1. If the application is incomplete, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application.

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete.

3. The applicant shall submit a complete proposed plan or request within the time stated in the Department's notification.

4. If the applicant fails to submit a complete application within the time stated in the Department's notification, the Department may reject the application.

(e) The Department shall approve the plan only if:

1. For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, there is another item of equipment or source operation at the facility which is:

i. Of the same make and model;

ii. Is used under substantially the same conditions; and

iii. Will have a continuous emissions monitoring system installed on it;

2. Under the plan, a continuous emissions monitoring system will be installed on each utility boiler at the facility if required under 40 CFR 75 or 76; and

3. The emission rate from the equipment or source operation on which the continuous emissions monitoring system is to be installed will not differ significantly from the emission rate from the corresponding equipment or source operation on which no continuous emissions monitoring system is to be installed.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under this section is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed).

1. The owner or operator may apply for and obtain the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration.

2. Before altering any equipment or source operation which is subject to the plan, the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of

fact in the request for the approval or any supporting documentation; or

3. The Department determines that as a result of a change in circumstances since the date the alternative rate was approved, the emissions from an unmonitored item of equipment or source operations are not substantially the same as the emissions from the corresponding continuously monitored item of equipment.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions monitoring system on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(l) The owner or operator of an item of equipment or source operation required to have a continuous monitoring system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of a plan for limited installation of a continuous emissions monitoring system shall send the application to the Department at the following address:

Chief, Bureau of Technical Services  
Air Quality Regulation  
Department of Environmental Protection and Energy  
380 Scotch Road  
Trenton, New Jersey 08628

#### 7:27-19.19 Recordkeeping

(a) Any person required to record or maintain information or records pursuant to this subchapter shall maintain the required information or records for a period of no less than five years after the record was made. Such person shall make the records available to the Department or to EPA upon request.

(b) Any person required to record or maintain information or records pursuant to this subchapter may submit a request to the Department, in writing, for approval to maintain alternate records. The Department may approve the request if the person demonstrates to the satisfaction of the Department and the EPA that the alternate records or information are at least as effective as those required by this subchapter in documenting compliance with this subchapter.

#### 7:27-19.20 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 26:2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

#### 7:27A-3.5 Civil administrative penalty determination—general

(a)-(c) (No change.)

[(d) Notwithstanding the provisions of N.J.A.C. 7:27A-3.6 through 3.10, the Department may assess a civil administrative penalty for offenses described in this section at the midpoint of the following ranges:

1. \$3,000 to \$10,000 for the first offense;
2. \$15,000 to \$25,000 for the second offense; and
3. \$30,000 to \$50,000 for the third and each subsequent offense.]

(d) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27 for which no penalty amount is specified under N.J.A.C. 7:27A-3.6 through 3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:27A-3.6 through 3.11 for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping requirements, reporting requirements or emission limits) and the nature and extent of the environmental harm likely to result from the type of violation; and
2. The factors listed in (e) below.

(e) The Department may, in its discretion, adjust the amount [determined] of any penalty assessed pursuant to [(d) above to assess a civil administrative penalty in an amount no greater than the maximum nor less than the minimum amount in the range on the basis of the following factors] this section or under N.J.A.C. 7:27A-3.6, 3.7, 3.8, 3.9, 3.10 or 3.11, based upon any or all of the factors listed in (e)1 through 6 below. The Department may apply such factors in addition to the factors listed in N.J.A.C. 7:27A-3.10(e)5 and 3.11. No such factor constitutes a defense to any violation.

1. The compliance history of the violator;
2. The number of times and the[,] frequency [and] with which the violation occurred;
3. The severity of the [offense] violation;
- [3.4. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the [current offense and to prevent future offenses] violation for which the penalty is being assessed;
5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent to which such measures are in addition to those required under an applicable statute or rule; and
- [4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or offense.]
6. Any other mitigating, extenuating or aggravating circumstances.

(f) (No change.)

#### 7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a)-(d) (No change.)

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1-18. (No change.)

19. The violations of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and the civil administrative penalty amounts for each violation are as set forth in the following table:

**PROPOSALS**

Interested Persons see Inside Front Cover

**ENVIRONMENTAL PROTECTION**

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-19.4(a)	Utility Boilers				
	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.4(b)3 and (b)4i	Utility Boilers Seasonally Combusting Natural Gas				
	Conditions of Approval	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.4(b)4ii and (b)5	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.4(c)1	Adjust combustion process	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.4(c)2	Repowered Utility Boilers				
	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.4(c)6	Conditions of Approval	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.4(d)	All Utility Boilers				
	Failure to Install CEM	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.5(a) or (b)	Stationary Gas Turbines				
	Actual Emission (pounds per million BTU):				
	3-10 MW Turbine				
	1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	11-50 MW Turbine				
	1. Less than 25 percent over the allowable standard	\$ 6,000	\$12,000	\$30,000	\$50,000
	2. From 25 through 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
	Greater than 50 MW Turbine				
	1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
	2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
	3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.5(c)5	Conditions of Approval	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.5(c)6	Adjust Combustion Process	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.5(d)	CO concentration				
	Maximum Actual Emissions				
	1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000

**ENVIRONMENTAL PROTECTION**

**PROPOSALS**

3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
N.J.A.C. 7:27-19.6(d)1 and 2 Averaging for electric generating utilities:				
Actual Emissions (pounds per million BTU):				
1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.6(f)1 or 2 Recordkeeping of Compliance				
Demonstration	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-19.6(g) Log	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-19.6(h) Quarterly Reports	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-19.6(i) Notification of Noncompliance	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-19.6(j)1 Notification—Inoperable Boiler or Turbine	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-19.7(a) Adjust combustion process	\$ 2,000	\$ 4,000	\$10,000	\$30,000
N.J.A.C. 7:27-19.7(b) or (c) Non-utility boilers				
Actual Emission (pounds per million BTU):				
Less than 25 MMBTU				
1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
25-57 MMBTU				
1. Less than 25 percent over the allowable standard	\$ 6,000	\$12,000	\$30,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
Greater than 57 MMBTU				
1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.7(d) Failure to install CEM	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.8(a), (b) or (c) Stationary Internal Combustion Engines				
Actual Emission (grams per horsepower hr):				
1000 Hp or Less				
1. Less than 25 percent over the allowable standard	\$ 6,000	\$12,000	\$30,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
Greater than 1000 Hp				
1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-19.9(a) Asphalt plants				
Maximum Actual Emissions:				
1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
N.J.A.C. 7:27-19.9(b) Adjust combustion process	\$ 2,000	\$ 4,000	\$10,000	\$30,000

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

**N.J.A.C. 7:27-19.10(a) or (b) Glass Manufacturing Furnaces**

**Maximum Actual Emission:**

**For less than 10 pounds per hr:**

1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000

**From 10 pounds through 22.8 pounds per hour:**

1. Less than 25 percent over the allowable standard	\$ 6,000	\$12,000	\$30,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000

**From greater than 22.8 pounds per hour:**

1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
2. From 25 through 50 percent allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000

N.J.A.C. 7:27-19.10(c)1 Conduct Stack Test \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.10(c)2 Submit Emission Reduction Plan \$10,000 \$20,000 \$50,000 \$50,000

N.J.A.C. 7:27-19.10(c)3 Implement Emission Reduction Plan \$10,000 \$20,000 \$50,000 \$50,000

**N.J.A.C. 7:27-19.10(c)4 Reduced Emissions 30%**

**Maximum Actual Emission:**

**For less than 10 pounds per hr:**

1. Less than 25 percent over the allowable standard	\$ 2,000	\$ 4,000	\$10,000	\$30,000
2. From 25 through 50 percent over the allowable standard	\$ 4,000	\$ 8,000	\$20,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000

**From 10 pounds through 22.8 pounds per hour:**

1. Less than 25 percent over the allowable standard	\$ 6,000	\$12,000	\$30,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000

**From greater than 22.8 pounds per hour:**

1. Less than 25 percent over the allowable standard	\$ 8,000	\$16,000	\$40,000	\$50,000
2. From 25 through 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000

N.J.A.C. 7:27-19.10(e) Adjust combustion process \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.13(i) Modify NO<sub>x</sub> control plan for alterations \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.13(m) Implement NO<sub>x</sub> Control Plan \$10,000 \$20,000 \$50,000 \$50,000

N.J.A.C. 7:27-19.16(c) Log \$ 500 \$ 1,000 \$ 2,500 \$ 7,500

N.J.A.C. 7:27-19.17(a)1 Conduct Stack Tests \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.17(a)2, 3 or 4 Information \$ 300 \$ 600 \$ 1,500 \$ 4,500

N.J.A.C. 7:27-19.17(b) Sampling and Testing Facilities \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.17(e) Record keeping \$ 500 \$ 1,000 \$ 2,500 \$ 7,500

N.J.A.C. 7:27-19.18(a)2, 3, 4 or 5 Monitoring \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.18(h) Conditions of Approval \$ 2,000 \$ 4,000 \$10,000 \$30,000

N.J.A.C. 7:27-19.19(a) or (b) Record keeping \$ 500 \$ 1,000 \$ 2,500 \$ 7,500

20.-25. (No change.)

## HEALTH

(a)

BUREAU OF VITAL STATISTICS AND  
REGISTRATIONNotice of Reopening of Comment Period  
Creation of Birth Record

## Proposed Repeal and New Rules: N.J.A.C. 8:2

Take notice that the comment period for the proposed repeal and new rules for the creation of the birth record, N.J.A.C. 8:2, has been reopened. The notice of proposal was published at 24 N.J.R. 4325(a). The new comment period will extend from February 16, 1993 to March 18, 1993 and all comments should be directed to:

Charles A. Karkut, State Registrar  
Bureau of Vital Statistics and Registration  
New Jersey Department of Health  
CN 370  
Trenton, NJ 08625-0370  
609-292-4589

(b)

EPIDEMIOLOGY, ENVIRONMENTAL AND  
OCCUPATIONAL HEALTH SERVICESNotice of Pre-Proposal  
Packing Refrigerated Foods In Reduced Oxygen  
Packages

## N.J.A.C. 8:24

Authority: N.J.S.A. 26:1A-7.

Pre-Proposal Number: PPR 1993-1.

A public hearing concerning this pre-proposal will be held on:

Monday, March 8, 1993, at 1:00 P.M. at  
New Jersey State Department of Health  
Health and Agriculture Building  
Room 106 (Auditorium)  
Trenton, New Jersey

Take notice that the New Jersey State Department of Health, with the approval of the Public Health Council, pursuant to its authority to promulgate rules in accordance with the State Sanitary Code, N.J.S.A. 26:1A-7 et seq., will receive preliminary comments with respect to rulemaking before proceeding to propose rules governing the packing of refrigerated foods in reduced oxygen packages by retail food establishments. The current rules governing retail food establishments and food and beverage vending machines do not specifically address this practice, which is being employed by a number of retail supermarkets in order to extend to the shelf-life of cold cuts and other refrigerated foods purchased in bulk, sliced and packaged by equipment designed to reduce the oxygen within the package.

This process has been successfully utilized by large scale food manufacturers under United States Department of Agriculture control for cured meats with nitrates, products with an acidic value (pH) under 4.6, and/or with a water activity of less than 9.3. Also, the technology has been used for years for foods with high levels of non-pathogenic organisms such as raw meats and natural hard and semi-soft cheese containing live starter cultures. Additionally, the U.S. Food and Drug Administration and the National Marine Fisheries Service have established protocols and controls for other commercially processed foods such as seafood products and other non-meat foods. Since the late 1980s, this technology has been available for use by smaller retail food establishments, such as supermarkets.

Products improperly packaged in a reduced oxygen atmosphere may pose a serious public health threat because the food may not exhibit the usual organoleptic (taste/smell) or visual signs of spoilage usually relied on by consumers to warn them that food is no longer edible. While oxygen reduced packaging may extend the shelf life of certain foods, the process can also create a serious public health hazard such as growth of *C. botulinum* and *L. monocytogenes* if the proper control parameters are not followed. These control parameters must include recognized

barriers that prevent the growth of infectious or toxigenic microorganisms combined with proper temperature control of the product at all times. The barriers include proper refrigeration and the establishment of secondary safety barriers such as the control of acidity (pH) and water activity (Aw) of the foods being packed by this method. Additionally, proper staff training, adherence to established packing procedures, proper stock rotation and product labeling are important components of a safety control plan that needs to be in place before a retailer considers packing refrigerated foods in reduced oxygen packages.

In January 1989, the U.S. Food and Drug Administration (FDA) recommended a number of control steps to be followed if a retail food establishment was to be permitted by a regulatory agency to pack refrigerated foods in reduced oxygen packages. In February and April 1989, the New Jersey Food Council and a major supermarket chain requested that the Department consider the guidelines issued by the FDA, since a number of supermarkets in the State wished to use this technology. As an interim measure, the New Jersey Food Council's Sanitation Committee, after discussions with the Department, indicated that they would recommend that their members follow and utilize the FDA recommendations. In June, 1990, the Association of Food and Drug Officials issued more detailed guidelines supplementing the recommendations issued by the FDA.

During the rule revisions of N.J.A.C. 8:24 that took place in 1991, the Department was requested by a local health department to consider establishing specific rules regulating this practice. At that time, the Department decided to wait for final recommendations from the FDA, which were being considered at that time. Subsequent discussions with the FDA indicated that they were not issuing further guidelines in this area until that agency completed the revisions in the Federal model food service code and requested that regulatory agencies continue to utilize the FDA's original recommendations and those published by the Association of Food and Drug Officials.

To date, the Department has been requesting that the retail food industry follow the guidelines established by the Association of Food and Drug Officials. The Department is eliciting comments from the regulated industry, local health authorities and the public as to whether these guidelines are considered appropriate, necessary, easily understood and provide adequate public health protection. Further, the Department is eliciting public comment as to whether formal rulemaking is appropriate or whether the Department should continue the policy of monitoring and controlling this practice by continuing to request voluntary adherence to the existing guidelines until the FDA further addresses this issue in the model food service code whether currently under revision.

The Department is publishing the guidelines which follow in order to elicit comments from the public. If the Department promulgates rules governing the packing of refrigerated foods in reduced oxygen packages, such guidelines would provide the model for the rules. The guidelines include definitions and requirements for packaging, labeling, employee training and handling of the food products.

## DEFINITIONS

Acceptable Product List—Means a list of foods, endorsed by the regulatory authority or a process authority acceptable to the regulatory authority, which because of their characteristics will present a barrier to the growth of *Clostridium botulinum*.

Barrier—means a safety factor of a physical, biological, or chemical nature which inhibits or minimizes the growth of microorganisms, including those which may be infectious or toxigenic.

Critical Control Point—Any point in a procedure in a specific food processing or packaging operation where loss control may result in an unacceptable health risk.

Dedicated Equipment or Personnel—Means equipment or personnel reserved solely for the use of one operation.

Hazard Analysis Critical Control Point (HACCP) Program—Means a comprehensive food safety control plan which includes a step-by-step description of the food processing, packaging and storage procedures including identification of critical control points (CCPs); the food contact surface cleaning and sanitizing procedures; lot identification procedure and training procedures.

Lot—means a unique run of processed or packaged product, with a specifically designated date and processing operation.

Official Method of Analysis—Means the Official Methods of Analysis of The Association of Official Analytical Chemists published by the Association of Official Analytical Chemists, 1111 North 19th Street, Suite 210, Arlington, Virginia 22209.

Processing—Means to manufacture, compound, intermix or prepare food products for sale being made primarily to the consumer.

Retail Food Establishment—Means a facility where food products are processed, prepared, stored or handled, and sold or offered for sale at retail with such sales being made primarily to the consumer.

#### TYPES OF REDUCED OXYGEN PACKAGING

Cook-Chill—In this process, a plastic bag is filled with hot cooked food and the air is expelled, usually by hand, while the bag is being sealed, often with a twist tie, before being blast or tumble chilled.

Vacuum Packaging—In this process, the air (including oxygen) is mechanically extracted from the package immediately prior to sealing.

Sous Vide—This is vacuum packaging of raw ingredients followed by cooking within the sealed container. The cooking is not sufficient to make food shelf-stable, so it must be held refrigerated.

Modified Atmosphere Packaging (MAP)—This is a one-time gas-flushing and sealing process. The gas atmosphere within the package is then allowed to passively change due to factors of container permeability and food product respiration.

Controlled Atmosphere Packaging (CAP)—This is an active system which continuously maintains the desired atmosphere within the package throughout the shelf-life. It uses an agent to bind or "scavenge" oxygen permeating the package, or a sachet to emit a gas.

#### REGULATORY AUTHORITY APPROVAL

Retail food establishments must obtain written permission from the appropriate regulatory authority assigned the primary food protection responsibility in their respective jurisdiction before packaging foods in a reduced oxygen atmosphere. The request from the retailer and approval from the regulator must be product-specific.

#### POSTING OF ACCEPTABLE PRODUCTS AND PRECAUTIONS

A list of products approved by the regulatory authority or a process authority acceptable to the regulatory authority for reduced oxygen packaging must be posted in the processing area along with a warning against packaging unapproved foods.

#### EMPLOYEE TRAINING

Retail employees assigned to process foods in reduced oxygen packages must be familiar with these guidelines and the potential hazards associated with reduced oxygen packaged foods. A description of the training and course content provided to the retail employees must be available for review by the regulatory authority.

#### REFRIGERATION REQUIREMENTS

All retail processed foods in reduced oxygen packages must be refrigerated at 45 degrees Fahrenheit or below or kept frozen at 0 degrees Fahrenheit or below.

#### LABELING—REFRIGERATION STATEMENTS

All retail packaged foods in a reduced oxygen atmosphere must bear a "keep refrigerated" or "keep frozen" statement. This statement must appear on the principal display panel in bold type on a contrasting background.

#### LABELING—"USE BY" DATES

Each package of refrigerated retail processed food in a reduced oxygen atmosphere must bear a "use by date". This date cannot exceed 14 days from retail processing. Also, the date assigned by the retailer cannot go beyond the manufacturer's recommended "Pull Date" for the food. The "use by" date must be listed on the principal display panel in bold type on a contrasting background. Foods that remain frozen before, during, and after processing are exempt from this requirement.

#### SAFETY BARRIERS

Refrigeration is the primary safety barrier. Only refrigerated food that possess one or more of the following secondary safety barriers can be packaged in a reduced oxygen atmosphere at retail.

Water activity (Aw) below .91

Acidity (pH) of less than 4.6

High levels of non-pathogenic competing organisms that prohibit the growth of pathogenic bacteria.

Meat or poultry products processed under United States Department of Agriculture supervision with a nitrite level of at least 120 parts per million and a minimum brine concentration of 3.5 percent.

Frozen foods provided the product is maintained in a frozen state before, during and after packaging.

#### FISH AND FISHERY PRODUCTS

Raw or processed fish and fishery products shall not be processed at retail in a reduced oxygen atmosphere unless held frozen before, during and after packaging.

#### SAFETY BARRIER VERIFICATION

The safety barrier requirement must be verified in writing for all foods processed in a reduced oxygen atmosphere at retail. This can be accomplished via written certification from the product manufacturer or through independent laboratory analysis of the incoming product using the official method of analysis. Any changes in product formulation or processing procedures that impact on the safety barrier require re-certification of the product. All barrier certifications must be updated every twelve months or as required by the appropriate regulatory authority. A record of all safety barrier verification must be available at the processing site for regulatory review.

#### UNITED STATES DEPARTMENT OF AGRICULTURE

Meat and poultry products, cured under United States Department of Agriculture inspection or a state program equal to United States Department of Agriculture, with a nitrite level of at least 120 parts per million and a brine concentration of at least 3.5 percent are exempt from the safety barrier verification requirements.

#### HAZARDS ANALYSIS AND CRITICAL POINT (HACCP)

All retail food establishments processing food in a reduced oxygen atmosphere must develop a HACCP Program and maintain a copy of this program at the processing site for review by the appropriate regulatory authority. This HACCP Program shall include:

A complete description of the processing, and storage procedures. The program must also identify the critical control points in the procedure with a description of how these will be monitored and controlled.

A list of the equipment and food-contact packaging supplies used including compliance standards required by the regulatory agency (i.e., National Sanitation Foundation or United States Department of Agriculture).

A description of the lot identification system.

A description of the employee training program.

If gases are used, they must be identified as being of food grade quality and must be listed by proportion of gas(es) used in the packaging.

A description of the procedure along with the frequency of cleaning and sanitizing the involved food-contact surfaces in the processing area.

A description of action to be taken if there is a deviation from the process approved by the regulatory agency.

#### PRECAUTIONS AGAINST CONTAMINATION

Only unopened packages of commercially manufactured food products can be used to process in a reduced oxygen atmosphere. If it is necessary to stop processing for a period in excess of one-half hour, the remainder of that product must be diverted for another use in the retail operation.

#### DISPOSITION OF EXPIRED PRODUCT

Retail processed reduced oxygen foods that exceed the "use by" date or the manufacturer's "pull date" cannot be sold in any form and must be destroyed in a proper manner.

#### DEDICATED AREA RESTRICTED ACCESS

All aspects of reduced oxygen packaging shall be conducted in an area specifically designated for this purpose. There shall be an effective separation to prevent cross-contamination between raw and cooked products. Access to the processing areas shall be restricted to responsible trained personnel who are familiar with the potential hazards of this operation.

#### REGULATORY AUTHORITY EXEMPTION

Foods recognized as not potentially hazardous by the regulatory authority or a processing authority acceptable to the regulatory authority may be exempted from all or part of the requirements in these retail guidelines. Any exemptions granted must be listed after the product on the approval list posted in the processing area:

For example, "Coffee Beans—exempt from refrigeration requirements."

The Department is eliciting comments from the public and the regulated industry prior to proposing new rules governing this practice.

Interested persons may submit written comments on the issues raised by this pre-proposal.

Submit comments by March 18, 1993 to:

William N. Manley  
Coordinator, Health Projects  
New Jersey State Department of Health  
Retail Food Project  
Food and Milk Program  
CN 369  
Trenton, NJ 08625-0369

This is a notice of pre-proposal for a rule (see N.J.A.C. 8:24). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented in accordance with the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(a)

**EPIDEMIOLOGY, ENVIRONMENTAL AND  
OCCUPATIONAL HEALTH SERVICES**

**Retail Food Establishments and Food and Beverage  
Vending Machines**

**Proposed Readoption with Amendments: N.J.A.C.  
8:24**

**Proposed Repeal: N.J.A.C. 8:24-8**

**Proposed New Rules: N.J.A.C. 8:24-8 and 9**

Authorized By: The Public Health Council, William Frascella,  
O.D., Chairman.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1993-73.

A public hearing concerning this proposal will be held on Monday,  
March 8, 1993 at 1:00 PM, at:

New Jersey Department of Health  
Health and Agriculture Building  
Room 106 (Auditorium)  
John Fitch Plaza  
Trenton, New Jersey

Submit written comments by March 18, 1993 to:

William N. Manley  
Coordinator, Health Projects  
N.J. State Department of Health  
Retail Food Project  
Food and Milk Program  
CN 369  
Trenton, New Jersey 08625-0369

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:24 (Chapter XII, State Sanitary Code) expires on May 3, 1993. On July 6, 1972, the Public Health Council, pursuant to its authority delegated in N.J.S.A. 26:1A-7, adopted sanitary regulations pertaining to retail food establishments. These rules were subsequently readopted with revisions on July 15, 1991 (see 23 N.J.R. 168(b), 23 N.J.R. 2124(a)) and July 6, 1992 (see 24 N.J.R. 915(a), 24 N.J.R. 2448(a)).

Based upon the comprehensive nature of the revisions conducted in 1991 and 1992, the Department, with concurrence from the Public Health Council, believes that the rules reflect current public health practices and are reasonable and proper for the purpose for which they were originally promulgated.

Foods improperly prepared by retail food establishments have been involved in many disease outbreaks including salmonellosis, staphylococcal intoxication, *C. perfringens* illness, and infectious hepatitis, among others. The potential for illness of the consumer increases with the frequency of meals being prepared and/or eaten away from the home, especially with the types of foods prepared in retail food establishments becoming more complex. Therefore, the continued regulation of the operation of retail food establishments is necessary to protect the health of consumers.

During the review conducted in 1991, N.J.A.C. 8:24-8, the rules governing temporary and mobile retail food establishments and agriculture

markets, was not extensively amended. This subchapter is primarily enforced by local health departments and combines the sanitary requirements for three types of establishments; temporary food establishments, mobile food vendors and agricultural markets. A number of local health departments have pointed out to the Department that they have encountered problems in identifying the specific requirements that should be applied in regulating each type of operation covered under this subchapter. A review by the Department revealed that the 1976 model food service sanitation ordinance adopted by the United States Food and Drug Administration has, in fact, established two separate provisions; one for temporary food establishments and agricultural markets and another for mobile food establishments.

In order to assist the Department and determine the best course of action regarding this matter, a committee of local health officials was convened and a consensus of opinion was reached that the sanitary provisions provided in the subchapter were, in general, reasonable and offered good public health protection. The committee believed, however, that the provisions related to temporary food establishments and agricultural markets and those concerning mobile retail food establishments should be separated into two distinct subchapters. Additionally, it was recommended that the rules should be amended to ensure that sufficient latitude is provided to the health authorities to be able to modify or relax standards for temporary food establishments, agricultural markets and mobile food establishments when no public health hazard will result and to augment the specific requirements under this subchapter, when necessary, in cases where operations are handling food under certain conditions that could cause an imminent health hazard if not properly controlled and regulated. Additionally, it was recommended that the rules be amended and expanded to conform to specific provisions of the United States Food and Drug Administration, 1976 Model Food Service Sanitation Manual. The amendments include provisions for the use of single service articles for both temporary and mobile food establishments, the disposal of liquid waste in temporary food establishments, and water supply requirements for mobile food establishments.

The Department is proposing to repeal subchapter 8, rules governing temporary and mobile retail food establishments and agricultural markets, and is proposing new rules at subchapters 8 and 9 that will separate the provisions that apply to temporary food establishments and agricultural markets from those that apply to mobile food establishments. The Department is also proposing a number of minor technical amendments that impact a number of other subchapters, and which also correct typographical errors.

A summary of each subchapter of N.J.A.C. 8:24 follows:

N.J.A.C. 8:24-1 provides for the declaration of violative establishments as nuisances: separability; and defines words and items used throughout the chapter and those establishments that must comply with the provisions set forth.

N.J.A.C. 8:24-2 specifies that foods used in retail food establishments must be from approved sources and safe for human consumption.

N.J.A.C. 8:24-3 provides for the protection of food from contamination while stored, prepared, served and transported; and specifies that adequate equipment must be provided for the hot and cold holding of foods, and that food must be held at safe temperatures.

N.J.A.C. 8:24-4 provides for the protection of food through specific health and disease controls, hygienic practices and handwashing.

N.J.A.C. 8:24-5 specifies that food equipment shall be constructed of safe, durable and easily cleanable materials and requires that equipment be cleaned and sanitized by specific methods following use.

N.J.A.C. 8:24-6 requires that the water supply be safe and of adequate quantity; that ice is produced and handled in a sanitary manner; that sewage be disposed of by approved systems; that plumbing be properly installed, maintained, and protected from contamination; that handwashing and toilet facilities be provided and properly maintained; that garbage and rubbish be stored inaccessible to vermin and that facilities be maintained in a sanitary manner; and that vermin be controlled.

N.J.A.C. 8:24-7 states that all other facilities of a retail establishment must be constructed and maintained in a sanitary condition; included are walls, floors, ceilings, lighting, ventilation. Also included are requirements for the control and restriction of live animals.

N.J.A.C. 8:24-8 currently refers to temporary and mobile retail food establishments and agricultural markets specifying requirements for approved food sources, food protection, equipment maintenance, water supply and waste disposal, handwashing, and general construction and maintenance of facilities. The Department is proposing to repeal this

subchapter and recodify it by establishing two separate subchapters; one for temporary retail food establishments and agricultural markets, and the other for mobile retail food establishments. The new subchapter 8 specifies the sanitary requirements, food sources requirements, restricted operations, equipment, water supply and general construction and maintenance of temporary retail food establishments and agricultural markets.

N.J.A.C. 8:24-9, a new subchapter, specifies the general sanitary operating procedures governing mobile food establishments; sets requirements for base of operation and servicing areas; and establishes water supply and liquid waste disposal requirements and other sanitary requirements for the operation of mobile retail food establishments.

N.J.A.C. 8:24-10 establishes enforcement provisions and states that all retail food establishments must operate in compliance with N.J.A.C. 8:24 and Title 24 of the Revised Statutes of New Jersey; establishes that retail food establishments shall be inspected by the Department or a health authority; that records pertaining to food and supplies must be available; provides for the examination and condemnation of adulterated or unwholesome food and the closure of an establishment if suspected as a source of foodborne infection; and states that violative establishments are liable to penalties as provided by law. This subchapter also requires that the public must be informed of sanitary conditions through posting and available inspection reports and that establishments shall be issued evaluations by the Department or health authority based upon sanitary conditions observed during inspections.

N.J.A.C. 8:24-11 provides for the submission and review of plans for the construction or renovation of a retail food establishment be conducted by the Department or local health authority. In addition, this subchapter recommends that supervisory personnel be certified in food safety and sanitation through an approved course of instruction.

N.J.A.C. 8:24-12 refers specifically to requirements for vending machines, their construction, maintenance and location; the use of approved food supplies; personal hygiene of persons providing maintenance, the general protection of foods; and proper methods of waste disposal. This subchapter also requires that water shall be obtained from an approved source; and states inspection frequency and that machines must be accessible for inspections.

N.J.A.C. 8:24-13 establishes additional requirements to be met by retail food establishments such as the use of approved chemical sanitizing solutions and boiler water additives; references requirements for choking prevention posters and rules governing smoking in restaurants and food stores.

N.J.A.C. 8:24-14 establishes sanitary requirements for community residence and bed and breakfast retail food establishments including sources of food supplies; food protection and temperature requirements; food storage and preparation requirements; and provisions related to the safe handling of foods in these types of retail food establishments.

#### Social Impact

Once readopted, the rules will continue to provide reasonable standards in order to prevent food related morbidity and mortality; avoid cost-associated adversities resulting from foodborne illness; and create and maintain a safe and clean environment in which foods are produced. Compliance with the standards of operation established under these rules is an indispensable part of the Department's effort to ensure the service of safe and wholesome food in New Jersey. Failure to readopt these rules would seriously jeopardize food safety and sanitary conditions of retail food facilities within the State.

The proposed adoption of the new rules providing separate requirements for temporary food establishments and agricultural markets and those that apply to mobile retail food establishments will not have a significant social impact in that the types of foods currently being sold by these food vendors will continue to be available. The majority of the changes are administrative in nature and would provide the local health department with the latitude to be less stringent where appropriate without adversely affecting the safety of the foods served to the consuming public or jeopardizing the control of foodborne disease in these establishments.

The amendments will clarify the standards which apply to agricultural markets, mobile and temporary food facilities, assuring the public of safety and cleanliness as they patronize such facilities. Other amendments correct inconsistencies in citation or spelling, and have no significant social impact.

#### Economic Impact

Illness and outbreaks of foodborne disease cause economic losses and problems for patients and their families, for the establishment that prepared the implicated food, for the food industry in general, and for governmental agencies responsible for food protection and disease surveillance. The estimated national economic impact of foodborne salmonellosis, alone, has been as high as \$200,000,000 annually. If readopted, these rules would not cause any additional significant financial burden to the retail food industry. To the contrary, the rules would provide for the identification of hazards and the implementation of controls in food service operations thereby aiding the industry in directing resources to those areas which have shown to be the most cost beneficial in controlling foodborne disease. There is no reliable data currently available which could provide an estimate of the costs of compliance with these rules, since the variation in types and size of facilities is so great and since prudent business practice would dictate many of the same requirements.

The proposed repeal and adoption of new rules, providing separate requirements for temporary food establishments and agricultural markets and those that apply to mobile food establishments will not have a significant economic impact upon this segment of the retail food industry. Many mobile food establishments, for example, are voluntarily using single service supplies, and complying with other requirements, such as disposal of liquid waste and water supply requirements. The other changes are administrative in nature and would provide local health departments the latitude to be less stringent where appropriate, therefore reducing the economic burden of complying with the full scope of the requirements, for those facilities which can provide alternatives which the public health department finds in compliance with the purpose of this chapter.

#### Regulatory Flexibility Analysis

A large number of retail food establishments operating in the State are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules impose no reporting requirements and only minimal recordkeeping requirements, such as the retention of shellfish tags for a period of 90 days. The rules do impose other compliance requirements for both large and small businesses. The costs of these requirements can be identified for each facility; however, as stated in the Economic Impact, industry-wide figures have not been compiled. Businesses falling within the scope of the rules are required to engage professional services, such as examination and laboratory services, to assure sanitary conditions. Additionally, design and performance standards are directed toward the provision of wholesome food in a clean environment. The operators of retail food establishments are responsible for maintaining their establishments in a sanitary condition, regardless of whether their facilities are considered large or small businesses. Also, both large and small firms falling within the purview of these rules have the same responsibility to prevent illnesses related to food processed or handled on the retail level; therefore, the Department has determined that no differentiation based on business size should be made. Although the Department has determined that there should be no differentiation in the requirements based solely on size of the business, the rules, as specified at N.J.A.C. 8:24-8, 9 and 13, provide lesser requirements and are tolerant of the limitations of facilities provided for the operation of temporary food establishments, mobile food vendors, community residences and bed and breakfast food establishments, which, for the most part, are small businesses as defined under the Regulatory Flexibility Act.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:24.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:24-8.

**Full text** of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 8:24-1.3 Definitions

For the purpose of this chapter, the following words, phrases, names and terms shall have the following meanings, unless the context clearly indicates otherwise:

...  
 "Temporary retail food establishment" means any retail food establishment which operates at a fixed location for a temporary period of time in connection with a fair, carnival, circus, public

## HEALTH

exhibition, or similar transitory gathering, including church suppers, picnics, or similar organizational meetings, [mobile retail food establishments,] as well as agricultural markets.

...

### 8:24-2.3 Shellfish source

(a) (No change.)

(b) Shellfish tagging and labeling shall be as follows:

1.-3. (No change.)

4. Immediately upon receipt of a container of shellstock or a lot of shucked stock, the purchaser shall mark the date of receipt on the stub or tag and when the package is empty, [and] keep such stubs or tags on file for a period of not less than 90 days in an orderly fashion.

### 8:24-3.3 Food preparation

(a)-(f) (No change.)

(g) Custards, cream fillings, and similar products which are prepared by hot or cold processes, and which are used as puddings or pastry fillings, shall be kept at safe temperatures at or above 140 degrees Fahrenheit or at or below 45 degrees Fahrenheit except during necessary periods of preparation and service, and shall meet the following requirements as applicable[.]:

1. (No change.)

2. Such fillings and puddings shall be cooled to 45 degrees Fahrenheit or below as required by N.J.A.C. 8:24-3.2(c) immediately after cooking or preparation, and held there until combined into pastries, or served.

3. All completed custard filled and cream filled or similar type pastries shall, unless served immediately following filling, be cooled to 45 degrees Fahrenheit or below as required by N.J.A.C. 8:24-3.2(c) promptly after preparation, and held at that temperature until served. Synthetic filled products may be excluded from this requirement if:

i.-ii. (No change.)

iii. Other scientific evidence is on file with the health authority demonstrating that the specific product will not support the growth of pathogenic microorganisms[.];

[iv.]4. (No change in text.)

### 8:24-3.4 Food storage

(a) Containers of food shall be stored a minimum of six inches above the floor in such a manner as to be protected from splash and other contamination except that:

1. (No change.)

2. The containers are stored on dollies, racks, [or] pallets or skids that are easily movable.

(b)-(e) (No change.)

### 8:24-4.1 Health and disease controls

(a) Persons, while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores, acute respiratory infection, nausea, vomiting, or diarrhea which could cause food borne diseases such as staphylococcal intoxication, salmonellosis, shigellosis or hepatitis, shall not work in any area of a food establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals and no person known or suspected of being affected with any such disease or condition shall be employed in any such area or capacity.

(b)-(c) (No change.)

### 8:24-4.2 Hygiene practices

(a) (No change.)

(b) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment and utensil washing or food preparation areas[. Provided] , **provided** that locations in such areas may be designated by management for smoking, where no contamination of food, equipment, utensils, or other items needing protection will result.

(c) Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming

## PROPOSALS

food there may result in contamination of other food, equipment, utensils[,] or other items needing protection.

### 8:24-5.1 Design, construction and materials

(a)-(i) (No change.)

(j) Surfaces of equipment including shelves, not intended for contact with food, but which are exposed to splash, food debris, or otherwise require frequent cleaning, shall be reasonably smooth, washable, free of unnecessary ledges, projections, or crevices, readily accessible for cleaning, and of such materials and in such repair[s] as to be readily maintained in a clean and sanitary condition. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

(k)-(n) (No change.)

### 8:24-5.4 Equipment and utensil sanitization

(a) (No change.)

(b) All kitchenware and food contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous food shall be sanitized prior to such use, and following any interruption of operations during which contamination of the food contact surfaces is likely to have occurred. Where equipment and utensils are used for the preparation of potentially hazardous food on a continuous or production line basis, the food contact surfaces of such equipment, and utensils shall be cleaned and sanitized at intervals throughout the day on a schedule satisfactory to the Department [of Health] or health authority.

### 8:24-5.5 Methods and facilities for washing and sanitizing

(a)-(c) (No change.)

(d) Mechanical washing and sanitizing:

1. (No change.)

2. The flow pressure shall not be less than 15 or more than 25 pounds per square inch on the water line at the machine, and not less than 10 pounds per square inch at the rinse nozzles. A suitable gauge cock shall be provided immediately upstream from the final rinse valves to permit checking the flow pressure of the final rinse water on all machines.

3.-7. (No change.)

8. Any other type of machine, device, or facilities and procedures may be approved by the Department or local health authority for cleaning or sanitizing equipment and utensils, if it can be readily established that such machine, device, or facilities and procedures will routinely render equipment and utensils clean to sight and touch, and provide effective bactericidal treatment.

9. (No change.)

(e) (No change.)

### 8:24-5.6 Storage and handling of cleaned equipment and utensils

(a)-(b) (No change.)

(c) The storage of food equipment, utensils or single service articles in toilet rooms, toilet vestibules or garbage or mechanical rooms is prohibited.

### 8:24-5.7 Single service articles

(a) Single[-] service articles shall be made from clean, sanitary, nontoxic, safe materials. Equipment, utensils, and articles shall not impart odors, color, or taste, nor contribute to the contamination of food.

(b) Single[-] service articles shall be stored at least six inches above the floor on pallets, dollies or racks, in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines that are leaking or on which condensate water may accumulate.

(c) When offered for self[-] service, single[-] service knives, forks and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single[-] service knives, forks and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

(d) Single[-] service articles shall be used only once.

(e) All retail food establishments which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single[-] service articles.

#### 8:24-6.1 Adequacy, safety and quality of water

(a) The water supply shall be adequate as to quantity, of a safe, sanitary quality, and from a public or private water supply system which is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.) and regulations (N.J.A.C. 7:10) [et al.] and local laws, ordinances, and regulations; provided, that if approved by the Department of Environmental Protection, a nonpotable water supply system may be permitted within the establishment for purposes such as air conditioning and fire protection, only if such system complies fully with N.J.A.C. 8:24-6.6 (Size, installation and maintenance of plumbing), and the nonpotable water supply is not used in such a manner as to bring it into contact, either directly or indirectly, with food, food equipment or utensils.

(b) (No change.)

#### 8:24-6.5 Sewage

(a) All sewage shall be disposed of by means of:

1. (No change.)

2. A disposal system which is constructed and operated in conformance with N.J.A.C. 7:9A Standards for Individual Sub[-]surface Sewage Disposal Systems, the New Jersey Water Pollution Control Act Regulations, N.J.A.C. 7:14, and local laws, ordinances, and regulations.

#### 8:24-6.7 Drains

(a) (No change.)

(b) Each waste pipe from such equipment shall discharge into an open, accessible, individual waste sink, floor drain, or other suitable fixture which is properly trapped and vented; provided, that indirect connections of drain lines from other equipment used in the preparation of food or washing of equipment and utensils may be required by the Department or health authority when, in its opinion, the installation is such that backflow of sewage is likely to occur.

(c)-(d) (No change.)

#### 8:24-6.10 Garbage and rubbish disposal facilities

(a) (No change.)

(b) All containers, while being stored, shall be provided with tight-fitting lids or covers and shall, unless kept in a special vermin proofed room or enclosure or in a waste refrigerator, be kept covered. Containers used in food preparation and utensil washing areas need not be covered; provided, that they are removed to the garbage storage area upon being filled or otherwise emptied at least daily.

(c)-(g) (No change.)

(h) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be vermin-proof and shall be large enough to store the garbage and refuse containers that accumulate.

(i) (No change.)

(j) All garbage and rubbish shall be disposed of daily, or at such other frequencies and in such a manner as to prevent a public health nuisance. Including, including the development of excessive odors and the attraction of vermin.

(k) (No change.)

#### 8:24-7.1 Floor, walls and ceilings

(a) (No change.)

(b) The floor surfaces in kitchens, in all other rooms and areas in which food is stored or prepared and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms, and toilet rooms, shall be of smooth, nonabsorbent materials, and so constructed as to be easily cleanable; provided, that in areas subject to spilling or dripping of grease [of] or fatty substances, such floor coverings shall be of grease resistant materials; and provided further, that floors of nonrefrigerated dry food storage areas need not be nonabsorbent.

(c)-(g) (No change.)

(h) Mats or duckboards, if utilized, shall be so constructed as to facilitate easy cleaning, and shall be kept clean. They shall be of

such design and size as to permit easy daily removal for cleaning. Duckboards shall not be used as storage racks.

(i)-(n) (No change.)

#### 8:24-7.2 Lighting

(a) (No change.)

(b) Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches from the floor:

1. (No change.)

2. At least 10 foot candles of light in dry food storage areas, in walk-in refrigerators, [in lavatory and toilet areas,] and in all other areas. This shall also including dining areas during cleaning operations.

#### 8:24-7.4 Housekeeping

(a)-(i) (No change.)

(j) The traffic of unnecessary persons through the food[-] preparation and utensil[-] washing areas is prohibited.

(k)-(l) (No change.)

### SUBCHAPTER 8. TEMPORARY RETAIL FOOD ESTABLISHMENTS AND AGRICULTURAL MARKETS

#### 8:24-8.1 General provisions

(a) All temporary retail food establishments and agricultural markets shall comply with all provisions of this chapter which are applicable to their operation; provided, that the Department or health authority may augment such requirements when needed to assure the service of safe food; may prohibit the sale of certain potentially hazardous food; and may modify specific requirements when, in its opinion, no imminent health hazard will result.

(b) Due to the nature, location and variety of conditions surrounding the operation of such establishments, it is frequently not possible to provide certain physical facilities required for "permanent" establishments. In order to assure adequate protection of food served by temporary establishments and agricultural markets which are unable to meet fully the requirements of this chapter, it may be necessary to restrict the types of food sold or the methods by which served, to modify some requirements for procedures and facilities, and to impose additional requirements.

(c) When, in the opinion of the Department or health authority, no imminent hazard to the public health will result, temporary retail food establishments and agricultural markets which do not fully meet the requirements of N.J.A.C. 8:24-2 through 7 may be permitted to operate when food preparation and service are restricted and deviations from full compliance are covered by the additional or modified requirements, as set forth in this subchapter.

(d) Any other requirement deemed necessary by the Department or health authority to protect the public health, in view of the particular nature of the food service operation, shall be met.

#### 8:24-8.2 Restricted operations

(a) These provisions are applicable whenever a temporary food service establishment is permitted, under the provisions of N.J.A.C. 8:24-8.1(c), to operate without complying with all the requirements of this subchapter.

(b) The preparation of potentially hazardous food shall be prohibited, except that this prohibition shall not apply to:

1. Food which prior to service, requires only limited preparation, such as seasoning and cooking; or

2. Potentially hazardous food which is obtained in individual servings and is stored in approved facilities which maintain food at safe temperatures, below 45 degrees Fahrenheit or above 140 degrees Fahrenheit, and is served directly in the original individual container in which it was packaged at a food processing establishment.

#### 8:24-8.3 Sources of ice

(a) Ice which will be consumed, or which will come into contact with food, shall be obtained in chipped, crushed or cubed form and shall be made from water meeting the requirements of N.J.A.C. 8:24-6.1(a).

(b) Ice which will come in contact with food shall be obtained, transported and stored in sanitary closed containers satisfactory to the Department or health authority.

#### 8:24-8.4 Wet storage of food and beverages

(a) Wet storage of packaged food and beverages shall be prohibited; provided, that wet storage of pressurized containers of beverages may be permitted when:

1. The water contains at least 50 parts per million of available chlorine; and
2. The used water is changed frequently enough to keep both the water and container clean.

#### 8:24-8.5 Food contact surfaces

(a) Food contact surfaces of food preparation equipment such as grills, stoves and worktables shall be protected from contamination by dust, customers, insects or any other source.

(b) Where necessary, effective shields shall be provided.

#### 8:24-8.6 Equipment

Equipment shall be installed in such a manner that the establishment can be kept clean, and so that food will not become contaminated.

#### 8:24-8.7 Single service articles

All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single service articles for use by the consumer.

#### 8:24-8.8 Water supply

An adequate supply of water meeting the requirements of N.J.A.C. 8:24-6.1(a) for cleaning and handwashing shall be maintained in the establishment, and auxiliary heating facilities, capable of producing an ample supply of hot water for such purposes, shall be provided, except as provided in N.J.A.C. 8:24-8.9.

#### 8:24-8.9 Handwashing facilities

(a) Adequate facilities shall be provided for employee handwashing.

(b) Such facilities may consist of commercially packaged handwash tissues, or a pan, water, soap and individual paper towels, when deemed appropriate by the health authority.

#### 8:24-8.10 Liquid waste

All liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance condition.

#### 8:24-8.11 Floors

Floors shall be of tight wood, asphalt or other cleanable material; provided, that the Department or health authority may accept dirt or gravel floors when covered with removable, cleanable, platforms or duckboards, and graded to preclude the accumulation of liquids.

#### 8:24-8.12 Walls and ceilings

(a) Walls and ceilings shall be so constructed as to minimize the entrance of flies and dust.

(b) Ceilings may be of wood, canvas or other materials which protect the interior of the establishment from the elements, and walls may be of such materials or of 16 mesh screening or equivalent.

(c) When flies are prevalent, counter service openings shall either be equipped with self-closing, fly-tight doors, or the opening shall be protected by effective fans. Where fans are used for this purpose, the size of the opening shall be so limited that the fans employed will effectively prevent the entrance of flies.

### SUBCHAPTER 9. MOBILE RETAIL FOOD ESTABLISHMENTS

#### 8:24-9.1 General provisions

(a) All mobile retail food establishments shall comply with all provisions of this chapter which are applicable to its operation; provided, that the Department or health authority may augment such requirements when needed to assure the service of safe food; may prohibit the sale of certain potentially hazardous food; and may modify specific requirements when in its opinion no imminent health hazard will result.

(b) When, in the opinion of the Department or health authority, no imminent hazard to the public health will result, mobile retail food establishments which do not fully meet the requirements of N.J.A.C. 8:24-2 through 7 may be permitted to operate when food preparation and service are restricted and deviations from full compliance are covered by the additional or modified requirements, as set forth in this subchapter.

(c) Mobile food units or pushcarts serving only food prepared, prepackaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

(d) Any other requirement deemed necessary by the Department or health authority to protect the public health in view of the particular nature of the mobile food service operation shall be met.

#### 8:24-9.2 Single service articles

Mobile food units or pushcarts shall provide only single service articles for use by the consumer.

#### 8:24-9.3 Base of operations

(a) Mobile food units shall operate from a commissary or other fixed wholesale or retail food establishment. The units shall report daily or at a lesser frequency if deemed appropriate by the health authority to such location for all cleaning and servicing operations and for obtaining those food supplies deemed necessary by the health authority.

(b) The commissary or other fixed wholesale or retail food establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements set forth under N.J.A.C. 8:24-1 through 7 for retail food establishment and N.J.A.C. 8:21 for wholesale food establishments.

#### 8:24-9.4 Servicing area

(a) A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within the servicing area, there shall be a location providing for the flushing and drainage of liquid wastes, which is separate from the location provided for water servicing and for the loading and unloading of food and related supplies. The servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart or where all mobile food units do not contain waste retention tanks.

(b) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and be graded to drain.

#### 8:24-9.5 Servicing operations

(a) Potable water servicing equipment shall be installed in accordance with N.J.A.C. 8:24-6.6. Hose and hose connections for supplying potable water to the mobile units shall be provided. Such hose shall be equipped with a check valve or other device to eliminate possible contamination from return flow. There shall be facilities for hanging the hose for complete drainage and to avoid contamination.

(b) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with N.J.A.C. 8:24-6.5

#### 8:24-9.6 Water supply

(a) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this chapter. The water inlet shall

be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this subchapter.

#### 8:24-9.7 Handwashing facilities

(a) Handwashing facilities shall be provided for employee handwashing for mobile retail food service establishments where food products are directly handled and fabricated, but need not be provided for mobile units serving prepackaged foods, milk, cold sealed beverages and tea, coffee, hot chocolate or other hot drinks at temperatures above 140 degrees Fahrenheit.

(b) Facilities as in (a) above may consist of commercially packaged handwash tissues, or a pan, water, soap and individual paper towels, if deemed appropriate by the health authority.

#### 8:24-9.8 Liquid waste

If liquid waste results from the operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is at least 15 percent larger in capacity than the water supply tank. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. Liquid waste which is not discharged into a sewerage system shall be disposed of in such a manner as not to create a public health hazard or nuisance condition. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion.

### SUBCHAPTER [9.]10. ENFORCEMENT PROVISIONS

Recodify existing N.J.A.C. 8:24-9.1 to 9.7 as **10.1 to 10.7** (No change in text.)

#### 8:24-[9.8]10.8 Public posting of inspection reports

(a) (No change in text.)

(b) An inspection report shall be presented by the inspector to the owner or person in charge or in their absence any employee of the establishments at the completion of each inspection [the]. The evaluation placard shall be posted immediately in a conspicuous place near the public entrance of the establishment in such a manner that the public may view the placard.

(c) (No change.)

#### 8:24-[9.9]10.9 (No change in text.)

#### 8:24-[9.10]10.10 Report of inspections

Whenever an inspection of a retail food establishment is made, the findings shall be recorded on an inspection report form approved by the State Department of Health. The inspection report form shall identify in a narrative form the violations of this [regulation] chapter and shall be cross referenced to the section of the [regulation] chapter being violated.

#### 8:24-[9.11]10.11 Evaluation of reports

(a) Immediately upon the conclusion of the inspection, the licensed health officer or licensed sanitary inspector shall issue the evaluation of the establishment and leave the original copy with the person in charge. Evaluations shall be as follows:

1. (No change.)

2. Conditionally Satisfactory—At the time of the inspection, the establishment was found not to be operating in substantial compliance with this chapter and was in violation of one or more provisions of this chapter. [During] **Due** to the nature of these violations, a reinspection [is] **shall be** scheduled. The reinspection shall be conducted at an unannounced time [and a full inspection must] . **A full inspection shall be** conducted. Opportunity for reinspection shall be offered within a reasonable time and **shall be** determined by the nature of the violation.

3. Unsatisfactory—Whenever a retail food establishment is operating in violation of this chapter, with one or more violations that constitute gross [unsanitary] **insanitary** or unsafe conditions

which pose an imminent health hazard, the health authority shall issue an unsatisfactory evaluation. The health authority shall immediately request the person in charge to voluntarily cease operation until it is shown on [re-inspection] **reinspection** that conditions which warrant an unsatisfactory evaluation no longer exists. The health authority shall institute necessary measures provided by law to assure that the establishment does not prepare or serve food until the establishment is re-evaluated. These measures may include embargo, condemnation and injunctive relief.

#### 8:24-[9.12]10.12 (No change in text.)

### SUBCHAPTER [10.]11. REVIEW OF PLANS, MANAGER TRAINING AND CERTIFICATION

#### 8:24-[10.1]11.1 (No change in text.)

#### 8:24-[10.2]11.2 Pre-operational inspection

Whenever plans and specifications are required by N.J.A.C. 8:24-[10.1] **11.1** to be submitted to the regulatory authority, the regulatory authority shall inspect the retail food establishment prior to the start of operations, to determine compliance with the requirements of this chapter.

#### 8:24-[10.3]11.3 (No change in text.)

### SUBCHAPTER [11.]12. SANITARY REQUIREMENTS FOR THE VENDING OF FOOD AND BEVERAGES

Recodify existing N.J.A.C. 8:24-11.1 to 11.4 as **12.1 to 12.4** (No change in text.)

#### 8:24-[11.5]12.5 Interior construction and maintenance

(a)-(f) (No change.)

(g) In machines designed so that food[-] contact surfaces are not readily removable, all such surfaces intended for in-place cleaning shall be designed and fabricated so that:

1.-4. (No change.)

(h) The openings into all nonpressurized containers used for the storage of vendible food, [including] **including** water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths inch, and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food container unless a water-tight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, durable and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

(i)-(k) (No change.)

Recodify existing N.J.A.C. 8:24-11.6 and 11.7 as **12.6 and 12.7** (No change in text.)

#### 8:24-[11.8]12.8 Single[-]service articles

Single[-]service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary single[-]service dispenser. All single[-]service articles shall be protected from manual contact, dust, insects, rodents and other contamination.

#### 8:24-[11.9]12.9 (No change in text.)

#### 8:24-[11.10]12.10 Water supply

(a)-(c) (No change.)

(d) To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, post-mix soft drink vending machines which are directly connected to the

external water supply system shall be equipped with a double (or two single) spring-loaded check valves or other devices which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. Backflow preventive devices shall be located to facilitate servicing and maintenance. No copper tubing or other potentially toxic tubing or contact surfaces shall be permitted in or downstream from the check valves or backflow devices. These check valves or devices should be inspected and cleaned or replaced annually.

(e)-(f) (No change.)

Recodify existing N.J.A.C. 8:24-11.11 through 11.13 as **12.11 through 12.13** (No change in text.)

Recodify existing N.J.A.C. 8:24-12 and 13 as **13 and 14** (No change in text.)

## (a)

### PUBLIC HEALTH COUNCIL

#### Clinical Laboratory Licensure Limited Purpose Laboratories

**Proposed Repeal: N.J.A.C. 8:44-3**

**Proposed Amendments: N.J.A.C. 8:44-2.2**

Authorized By: Public Health Council, William Frascella, Jr.,  
O.D., Chairman.

Authority: N.J.S.A. 45:9-42.34.

Proposal Number: PRN 1993-78.

A **public hearing** concerning these proposed amendments will be held on Monday, March 8, 1993 at 3:30 PM at the following address:

Department of Health  
Room 106 (Auditorium)  
Health-Agriculture Bldg.  
Trenton, New Jersey 08625-0360

Submit written comments by March 18, 1993 to:

Samuel Thompson, Ph.D.  
Director, Clinical Laboratory Improvement Services  
New Jersey Department of Health  
CN 361  
Trenton, New Jersey 08625-0361  
609-530-6150

The agency proposal follows:

#### Summary

Final rules for the implementation of the Federal Clinical Laboratory Improvement Amendments of 1988 (CLIA'88) (PL 100-578) were published under 42 CFR Part 493 in the February 28, 1992 Federal Register. These rules in essence negated New Jersey's Limited Purpose Laboratory (LPL) classification, as established at N.J.A.C. 8:44-3.

Under CLIA'88, laboratories meeting New Jersey's LPL requirements would either qualify for Federal Certificate of Waiver or require certification. Those eligible for Certificates of Waiver would essentially be exempt from Federal regulation, while laboratories requiring certification would have to meet more stringent standards than those specified in N.J.A.C. 8:44-3.

Consequently, the Department proposes to repeal N.J.A.C. 8:44-3, thereby eliminating the LPL classification. Simultaneously, N.J.A.C. 8:44-2.2(b) will be amended to add laboratories possessing a Federal Certificate of Waiver under CLIA'88 as a fifth category of laboratories exempt from New Jersey's laboratory requirements (N.J.A.C. 8:44).

#### Social Impact

The provision of services to moderate and/or low income families through public health agencies or non-profit, publicly sponsored clinics will be aided by the elimination of all regulatory requirements for those programs that can qualify for a Federal Certificate of Waiver. Requirements for other former LPLs will be somewhat increased as a result of the new Federal regulations which will make their direct provision of added laboratory services more difficult.

#### Economic Impact

The proposed repeal and amendment will provide savings to those LPLs which, through exception, will no longer be required to be proficiency tested. Many of these are publicly funded. Such laboratories will

also not be required to pay a licensure fee. Those LPLs which will be required to pay licensure fees face only modest charges. The costs will otherwise be approximately the same as before. Since fees are based on such factors as volume and number of employees, with the higher volume and the greater number of employees resulting in a larger fee, the result is an accommodation based to some extent on the volume and size of the business. Most former LPLs are low-volume facilities, with few employees involved in testing.

#### Regulatory Flexibility Analysis

The proposed repeal and amendment will have an impact on many public health agencies as well as LPLs sponsored by public funds, many of which could be categorized as small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For those LPLs which will now be eligible for exemptions through receipt of a Federal Certificate of Waiver, in accordance with CLIA'88, the proposed changes provide a benefit, in that they will no longer incur the costs of compliance with State rules related to proficiency testing, record-keeping, quality control and quality assurance. Those LPLs which are not eligible for the exemption will incur added costs; however, such laboratories will be assessed fees which are based on volume and size of business and will experience little change in the reporting or recordkeeping requirements. Since N.J.S.A. 45:9-42.34 requires New Jersey to establish standards which are at least as stringent as the Federal standards in the CLIA'88, the Department has provided no additional exemption based upon business size in the proposal.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:44-3.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:44-2.2 Applicability of regulations

(a) (No change.)

(b) The regulations do not apply to the following:

1.-3. (No change.)

4. Blood banks licensed under P.L. 1963, c.33 (N.J.S.A. 26:2A-2 et seq.)[.]; and

5. **Clinical laboratories possessing a Federal Certificate of Waiver as defined by Federal Clinical Laboratory Amendments of 1988 (CLIA'88) (P.L. 100-578) and regulations adopted thereunder (42 CFR Part 493, published in the Federal Register, February 28, 1992).**

## HIGHER EDUCATION

### (b)

#### BOARD OF HIGHER EDUCATION

#### Policies and Procedures Pertaining Strictly to County Community Colleges Physical Facilities

**Proposed Amendment: N.J.A.C. 9:4-1.12**

Authorized By: Board of Higher Education,

Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64A-7.

Proposal Number: PRN 1993-35.

Submit comments by March 18, 1993 to:

Valerie Van Baaren, Esq.  
Administrative Practice Officer  
Department of Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Board of Higher Education recently proposed (23 N.J.R. 2467(a)) and adopted (23 N.J.R. 3143(a)) a readoption with amendments of N.J.A.C. 9:4, Policies and Procedures Pertaining Strictly to County Community Colleges. As part of the readoption, an amendment was adopted at N.J.A.C. 9:4-1.12(g), Physical facilities, which states that any construc-

tion project that involves the renovation, rehabilitation, or alteration of existing facilities, the project cost of which does not exceed one percent of the net investment of the college's physical plant or \$1,000,000, whichever is less and is not being funded in whole or in part with State funds, may proceed with the approval of the board of trustees of the college; the amendment increased the amount to \$1,000,000 from \$500,000. In an effort to standardize to one figure across all sectors of higher education, the Board proposed (23 N.J.R. 3196(b)) and adopted (24 N.J.R. 1340(a)), an amendment to increase the \$1,000,000 amount to \$2,000,000 and deleted the text setting out the "one percent of the net investment of the college's physical plant" provision, which had proved over time to be impractical in its application. In order to clarify the regulation and to promote efficiency, the Board is now proposing to modify this amended subsection to make clear that the provision applies to new construction as well as to renovation, rehabilitation or alteration of existing facilities, and to specify when Board of Higher Education approval is not required whether or not State funds finance the project in whole or in part.

#### Social Impact

N.J.A.C. 9:4-1.12(g) has enabled the Board of Higher Education to exercise its appropriate oversight of significant facilities renovations, rehabilitation or alteration at the county colleges. The proposed amendment will assure that the Board of Higher Education may continue to exercise appropriate oversight, including that of new construction projects of significant scope.

The proposed amendment will benefit the colleges by permitting them the flexibility to respond to their clients' needs.

#### Economic Impact

The proposed amendment to N.J.A.C. 9:4-1.12(g) may result in savings in administrative costs to the college because there would be no need to develop planning documents for construction proposals whose costs are less than \$2,000,000.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment applies strictly to county community colleges.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

9:4-1.12 Physical facilities

(a)-(f) (No change.)

(g) Any construction project that involves the **new construction**, renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed **\$2,000,000** [and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees] **will not require Board of Higher Education approval to proceed.**

## HUMAN SERVICES

### (a)

#### DIVISION OF MENTAL HEALTH AND HOSPITALS

##### Children's Partial Care Standards

**Proposed Amendments: N.J.A.C. 10:37-5.46, 5.47, 5.48, 5.49 and 5.50**

**Proposed New Rules: N.J.A.C. 10:37-12**

Authorized By: William Waldman, Acting Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1993-65.

Submit comments by March 18, 1993 to:

Raymond M. Denney, Esq.  
Administrative Practice Officer  
Division of Mental Health and Hospitals  
CN 727  
Trenton, NJ 08625-0727

The agency proposal follows:

#### Summary

Currently, operational standards for providers of State-funded partial care programs to both adults and children exist at N.J.A.C. 10:37-5.46 through 5.51. The Department recognized the need for specialized standards for children's partial care programs and convened a work group of Divisional staff, provider agency representatives, advocates and other interested parties to draft such standards for Divisional review. Subsequently, the draft was reviewed by the Statewide Children's Coordinating Council and additional provider agencies and interested parties. Thus, these proposed new rules represent the final product of that extensive process.

The proposed new rules for children's partial care standards are being codified as N.J.A.C. 10:37-12. The Division, as parts of its plan to revise and update various subchapters in N.J.A.C. 10:37, is reserving subchapters 9 through 11 for new rules that will be proposed in the future regarding community mental health services. Although the main focus of the current rules at N.J.A.C. 10:37-5.46 through 5.51 is the establishment of operational standards for Division-funded adult partial care programs, in several of those rule sections those standards refer to children's partial care programs. Because these proposed new rules are intended to constitute all the operational standards for children's partial care programs, those references to children's partial care programs in N.J.A.C. 10:37-5.46 through 5.51 are being deleted (see proposed amendments to N.J.A.C. 10:37-5.46 through 5.50). Their content has been determined to be addressed by the proposed new rules in a more updated manner. The operational standards found at N.J.A.C. 10:37-5.46 through 5.51 will continue to be applicable to Division-funded adult partial care programs.

Children's partial care programs provide seriously emotionally disturbed children with highly structured intensive day treatment, typically in a community-based mental health setting or hospital-based setting. The purpose of these proposed new rules is to promote the following goals for these funded programs: (1) the prevention of psychiatric hospitalization of youth at-risk of such hospitalization; (2) the prevention of rehospitalization of youth who have been psychiatrically hospitalized; and (3) the provision of a transition for psychiatrically hospitalized youth from the hospital back into the community.

A summary of the content of the proposed new rules follows:

N.J.A.C. 10:37-12.1 establishes the purpose, scope and goals for these State-funded programs. N.J.A.C. 10:37-12.2 defines the words and terms used in this subchapter. N.J.A.C. 10:37-12.3 identifies the target population to be served by these State funded programs. N.J.A.C. 10:37-12.4 outlines the types and availability of the program services to be provided. N.J.A.C. 10:37-12.5 discusses appropriate policies relating to the different age groups for the youth to be served. N.J.A.C. 10:37-12.6 establishes several required admission procedures applicable to these programs. N.J.A.C. 10:37-12.7 establishes certain required intake information for youth accepted into these programs. N.J.A.C. 10:37-12.8 establishes requirements regarding the development of service plans for youth accepted into these programs based on their clinical needs. N.J.A.C. 10:37-12.9 establishes requirements regarding the documentation of progress notes in each youth's record. N.J.A.C. 10:37-12.10 establishes requirements regarding discharge criteria, termination policies and procedures and appropriate referrals. N.J.A.C. 10:37-12.11 establishes requirements regarding the level of staffing for these programs. N.J.A.C. 10:37-12.12 describes the responsibilities and qualifications for the program director, psychiatrist, direct care professional workers, and direct care paraprofessional workers of these programs. This section also discusses responsibilities regarding the appropriate use by the program of volunteers, student interns and non-direct care staff.

#### Social Impact

By establishing appropriate and specialized operational standards for these Division-funded programs, these proposed new rules promote the provision of high quality services to the clients of these programs, assist in preventing unnecessary hospitalizations and provide opportunities for shortened hospitalizations in less restrictive and less costly community based settings. To the extent that these proposed new rules promote effective mental health treatment of children, their families and the public at large also benefit from their healthier adjustment to society. The proposed new rules also benefit the Division by providing standards which enable the Division to more accurately monitor the adequacy of a provider agency's service delivery.

**Economic Impact**

Because the Department believes that provider agencies would be sufficiently funded to comply with these proposed new rules, no specific economic impact, including incurring additional costs, upon the State or local government budget, provider agencies or other entities is anticipated from the proposed new rules. Of course, the clients of these programs benefit economically from the standards by receiving quality services at no personal expense.

Additionally, taxpayers benefit from these standards to the extent to which they promote efficient and effective use of public funds and minimize the need for more costly hospital care.

**Regulatory Flexibility Analysis**

Some providers of Division-funded partial care services may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules govern Division-funded partial care programs and set forth the reporting, recordkeeping and compliance requirements imposed on providers necessary for the efficient operation of the program. Reporting and recordkeeping requirements involve the provision of a comprehensive range of program services, including the development of policies and procedures for age-appropriate services, admission procedures, service plans, progress notes and procedures for termination, discharge and referral. The proposed new rules also set forth staffing requirements and responsibilities. (See specifically N.J.A.C. 10:37-12.5(c), 12.7(a), 12.8(a), 12.9(a), 12.10(a), 12.11(a)3 and 12.12(a), (c) and (e)8.) These proposed new rules establish no need for operators of these programs to employ outside professional services to comply with provisions, nor is there any requirement for providers to expend capital costs to comply with the rules.

The reporting, recordkeeping and compliance requirements imposed upon provider agencies must be uniformly applied regardless of the size of the provider agency to ensure that mentally ill individuals receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because children receiving them are typically at-risk of costly and restrictive hospitalization or rehospitalization. Additionally, these provider agencies are individually funded by the Division to be able to meet these requirements.

**Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):**

## 10:37-5.46 Scope and Purpose

**(a) The rules in this Article govern the operation of the Division of Mental Health and Hospitals funded adult partial care programs. The rules governing the operation of Division-funded children's partial care programs are codified at N.J.A.C. 10:37-12.**

Recodify (a)-(d) as (b)-(e) (No change in text.)

## 10:37-5.47 Funding requirements

(a) PC programs shall be available daily for five days a week, with additional planned activities each week, during evening and/or weekend hours, as needed. Individual clients, need not attend every day but as needed.

[1. PC programs specifically developed for children may be available four days a week, with one evening and/or weekend activity(ies).]

(b) PC activities shall be fully integrated into one comprehensive continuum of services. Contract programs shall not duplicate PC program sponsored through a Grant-in-Aid agency in the same Service Area.

(c) The Division may grant funding approval for more than one PC program sponsored by the same agency, in order to demonstrate a variety of service models and/or to develop a continuum with planned movement among PC programs based on client need. Such a request must be justified in writing to the County Mental Health Board and the Division and must be approved by the Division prior to implementation. Such PC programs shall not segregate clients on the basis of diagnosis and/or history of psychiatric hospitalization.

## 10:37-5.48 Population priorities

(a)-(b) (No change.)

(c) If a particular PC program is structured to serve the needs of children, the families of those children should be involved as much as possible, when not therapeutically contraindicated, in program planning, activities, counseling, and home follow-through.]

## 10:37-5.49 Services

(a) Services to be provided: These services shall be provided or arranged for, to meet the individual needs of participating clients (services (a)liii, and viii through xiv may be provided directly or arranged by PC staff, through other Program Elements or agencies, to avoid duplication):

1. Assessment and evaluation;
2. Service procurement;
3. Therapy;
4. Information and referral;
5. Counseling;
6. Daily living education;
7. Community organization;
8. Employment/employment readiness;
9. Housing/placement;
10. Legal;
11. Recreation;
- [12. Education (for children's partial care);]
- [13.]12. Transportation;
- [14.]13. Health related.

(b) Service approaches:

1.-5. (No change.)

[6. Education (for Children's PC): The rights of children to receive educational services must be assured by the program.]

Recodify existing 7 and 8 as 6 and 7. (No change in text.)

[9.]8. The Individual Service Plan shall be reviewed and updated minimally seven days after enrollment, 90 days after enrollment, and every six months thereafter, to insure program/service appropriateness.

[i. For Children's PC programs, reviews shall occur seven days after enrollment and every 30 days thereafter.]

Recodify existing 10-12 as 9-11. (No change in text.)

## 10:37-5.50 Staff

(a) There shall be a PC Director and other staff deemed necessary to implement a PC program which meets the requirements of Article VI of this subchapter.

(b) The Director shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field, with training and/or experience in direct service provision and administration.

(c) [For adult and adolescent PC programs,] "Other Staff" shall minimally include a staff person trained and/or experienced in the area of Employment-Related Services.

(d) A qualified psychiatrist shall be available to the PC program, on a regularly scheduled basis, for consultation.

(e) A qualified mental health professional shall be involved in the development and periodic review of each client's Individual Service Plan, at least every three months.

(f) Paraprofessionals and volunteers shall be utilized to the extent possible, to assist in a variety of ways, such as, but not limited to: activities programming, community-orientation, daily living education, advocacy, service procurement, and/or companionship.

## SUBCHAPTER 12. CHILDREN'S PARTIAL CARE PROGRAMS

## 10:37-12.1 Purpose, scope and goals

(a) Children's partial care programs provide seriously emotionally disturbed youth with a highly structured intensive day treatment program. Such programs are typically located in, but need not necessarily be limited to, a community-based mental health setting or hospital-based setting.

(b) Program goals include:

1. Prevention of psychiatric hospitalization of youth at risk of psychiatric hospitalization;
2. Prevention of re-hospitalization of youth who have been psychiatrically hospitalized; and
3. Provision of a transition for psychiatrically hospitalized youth from the hospital back into the community.

(c) Agencies operating children's partial care programs shall strive to maximize each youth's potential for learning, growth, and emotional stability within the family or natural support system. Agencies

operating children's partial care programs shall respect the rights and dignity of all youth. Partial care programs shall:

1. Respect the rights and dignity of youth and family members and when appropriate preserve the family unit;
2. Foster community living by teaching skills and improving functioning;
3. Help each youth to realize their own potential for learning;
4. Foster healthy interdependence;
5. Help clients develop and use social support systems;
6. Help clients and their family members or legal guardians learn to manage the client's illness in order to prevent relapse, re-hospitalization, or placement in a restrictive environment;
7. Empower clients and families to actively participate in treatment and programming and to determine personal and program goals;
8. Affirm clients strengths and abilities; and
9. Encourage and support clients' and families' efforts to help each other.

**10:37-12.2 Definitions**

The words and terms in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Children's crisis intervention services" or "CCIS" means an acute care inpatient unit located in a hospital or free-standing facility established to serve children and adolescents from the ages of five through 17 who have:

1. Received an initial screening by a designated mental health emergency or screening service;
2. A primary psychiatric diagnosis; and
3. A level of personal and social functioning impairment to the extent that inpatient psychiatric crisis intervention and treatment services are necessary.

"Children's partial care program" means a day treatment program offering structured activities including activities for daily living, recreation, and socialization activities and other mental health services based upon the needs of the youth.

"Comprehensive treatment plan" means the formulation of service and treatment goals, objectives and interventions based on an assessment which shall include psychological, medical, developmental, recreational and vocational components.

"Counseling" means the use of therapeutic methodologies which enable families to resolve problems or temporary stress of situations which they have encountered.

"Daily living skills" means the activities which enable a youth to perform functions for every day living, such as basic housekeeping, grooming, dressing, maintaining schedules, social and recreational activities.

"Department" means the New Jersey Department of Human Services.

"Division" means Division of Mental Health and Hospitals within the New Jersey Department of Human Services.

"DYFS" means Division of Youth and Family Services within the New Jersey Department of Human Services.

"Group counseling" means the use of group processes and supports to develop in individuals the capacity to overcome specific personal problems or problem conditions.

"Seriously emotionally disturbed" means a child or adolescent exhibiting one or more of the following characteristics: behavioral, emotional, or social impairment that disrupts the child's or adolescent's academic or developmental progress and may also impact upon family or interpersonal relationship. This disturbance shall have also impaired functioning for at least one year or the youth has an impairment of short duration and high severity and is under 18 years of age.

"Youth" means children under 18 years of age.

**10:37-12.3 Population to be served**

(a) Agencies operating children's partial care programs shall serve youth with serious emotional disturbances. First priority for admission shall be youth who are diagnosed as seriously emotionally disturbed and meet one or both of the following criteria:

1. Currently residing in or having previously resided in Arthur Brisbane Child Treatment Center, a Children's Crisis Intervention

Services (CCIS) unit, a psychiatric community residence for children program, a private hospital, or other out-of-home placement; and/or

2. By reason of serious emotional disturbances, presently at risk of extended out-of-home placement.

(b) Youth diagnosed as seriously emotionally disturbed who do not meet the criteria in (a)1 or 2 above may be admitted provided that all youth referred who meet the criteria are given first priority for admission. However, the agency must have written procedures which prioritize admission to those youth who meet the criteria in (a)1 or 2 above.

**10:37-12.4 Program services**

(a) Agencies operating children's partial care programs shall provide a comprehensive range of services to address the individual needs of the youth. These programs shall be available daily five days per week, with additional planned activities during evenings or weekend hours or both, as needed.

1. These services shall be available for all youth and provided to the extent required by individual service plan. The capacity to provide or arrange for partial care services shall be documented, and evidence of the actual provision of such services shall be documented in the clinical record. Services shall include, but need not be limited to, the following:

- i. Individual and group counseling and support;
- ii. Therapeutic activities to address daily living (ADL) skills, recreation and socialization needs;
- iii. Medication management;
- iv. Family support services such as: family therapy, family psycho-education, family supportive counseling, or parenting skills development;
- v. Psychiatric assessment;
- vi. Case coordination;
- vii. Referral, advocacy, and service linkages;
- viii. Liaison with the educational system; and
- ix. Therapeutic milieu activities such as community meetings, behavior management programs, and related programming.

2. For services arranged through non-partial care providers, the partial care program shall provide referral, case coordination, and advocacy for all such services not provided. These service needs and their appropriate provision shall be documented in the clinical record.

**10:37-12.5 Age appropriate services**

(a) The agency shall implement written policies and procedures that address age grouping of available services for nursery (ages three to five), latency (ages five to 10), pre-adolescent (ages 10 to 12), adolescent (ages 12 to 17), and aging-out youth (above age 17). In those cases where it is determined that a youth receives services not with their chronological age group, written documentation shall be maintained in their clinical record as to the justification therefor.

(b) The agency shall develop and implement written policies and procedures for transitioning youth from one age grouping to another age grouping, as well as, transitioning youth to adult services.

(c) The agency shall be permitted to provide partial care services to youth who attain age 18 provided that such services are indicated on the treatment plan, and adequately justified as to need for continued services.

**10:37-12.6 Admission**

(a) Agencies operating children's partial care programs shall develop written admission procedures. Procedures shall include, but not be limited to, the following:

1. Admission criteria (both inclusionary and exclusionary) that reflects the characteristics of the population to be served;
2. Referral procedures, which identify any service area or geographic restrictions, contact procedures, scheduling of intake interviews, and procedures for obtaining required information;
3. Procedures for obtaining an authorized consent for treatment; and
4. Procedures for notifying applicants, families and referral sources of admissions decisions, rationale for such decision, and any

information related to service initiation. Such notification shall be made within five days of the intake interview.

(b) The agency shall develop procedures for youth who are appropriate for the program but cannot be served immediately, including provisions for referral to interim services as needed.

#### 10:37-12.7 Intake

(a) Agencies operating children's partial care programs shall develop policies and procedures governing the recording of intake information. Intake information shall include, but not be limited to, the following:

1. Client's identifying information (for example, address, telephone number, emergency contact);
2. Presenting problem, reason for referral as perceived by client, parents, guardian and significant others;
3. A brief case history of illness including services received at the agency and elsewhere;
4. A psychiatric diagnosis (if applicable);
5. Indicators of characteristics that need to be of concern to service providers in the provision of treatment to the youth;
6. Medication information;
7. History of drug or alcohol abuse;
8. Current mental health service providers;
9. Other service providers;
10. Family information;
11. Social supports;
12. Medical history;
13. Relevant educational information; and
14. Legal information relevant to treatment.

#### 10:37-12.8 Service plan

(a) Agencies operating children's partial care programs shall develop service plans based on the clinical needs of the youth.

1. Based on the information gathered through the intake process, a member of the professional staff shall complete an assessment of the clinical needs of the child. This assessment shall include: treatment recommendations, immediate needs, preliminary goals or objectives and initial interventions. This assessment shall serve as the initial service plan until the comprehensive treatment plan is developed. This assessment shall be entered into the clinical record within 10 days of the child's admission.

2. Prior to the development of the comprehensive treatment plan, a full assessment shall be conducted, documented in the clinical record, and conclude with findings and recommendations. This assessment shall include, but not be limited to, the following factors relating to each individual youth:

- i. Motivation (for example, willingness to participate in the program);
- ii. Social and recreational (for example, ability to make friendships, communication skills, hobbies);
- iii. Emotional and psychological (for example, mental status, history of abuse, understanding of illness, coping mechanism);
- iv. Medical and health (for example, allergic reactions, medication information);
- v. Educational and vocational (for example, task concentration, motivation for learning);
- vi. Daily living activities (for example, transportation, budgeting, self care, hygiene);
- vii. Environmental supports (for example, housing, income);
- viii. Social supports (for example, family, friends);
- ix. Substance abuse and usage; and
- x. Strengths and special skills.

3. A comprehensive treatment plan based on the comprehensive assessments shall be developed no later than 30 days after entrance to the program. The plan shall be reviewed by appropriate treatment team members at subsequent 90-day intervals.

- i. The plan shall address all recommendations included in the comprehensive assessment.
- ii. The plan shall contain goals and measurable objectives set in reasonable time frames.
- iii. The plan shall contain staff interventions and frequency of service activities.

iv. The plan shall reflect client and family participation as evidenced by signatures as appropriate.

v. All other providers providing services to the youth shall be invited to provide input into the treatment planning process.

vi. All team members participating in the plan development shall sign the plan.

#### 10:37-12.9 Progress notes

(a) Progress notes shall be written in the youth's record at least weekly.

1. Each weekly progress note shall include:
  - i. A summary of services provided;
  - ii. The youth's general level of participation in the program for the week;
  - iii. The response to and outcome of service plan interventions; and
  - iv. Critical or significant events that have occurred during the week (for example, service coordination, crisis event).
2. During the course of treatment, the progress notes shall address all elements of the service plan and reflect the child's overall progress in the stated goals.

#### 10:37-12.10 Termination, discharge, and referral

(a) Agencies operating children's partial care programs shall have procedures for termination, discharge, and referral which ensure that the youth's continuing service needs are met.

1. Discharge criteria shall be documented in the clinical record. These criteria shall specify functional levels to be achieved for successful discharge.

2. Discharge criteria shall be incorporated into the treatment planning process.

3. Prior to discharge, a discharge plan shall be completed that shall address the youth's continuing needs. It shall minimally include an assessment of further need and available resources to meet such needs, referrals and linkages being made where appropriate to meet identified need and any follow-up activities and intervention planned.

4. The youth and family shall participate in the development of the discharge plan.

5. Agencies operating children's partial care programs shall have written policies and procedures that address termination. Such procedures shall assure that all termination decisions are reviewed for appropriateness. Such policies shall include, but not be limited to, possible reasons for termination, actions to be undertaken prior to a termination decisions and provisions for documentation of information relative to the termination decision.

6. The discharge summary shall include:

- i. The presenting problem;
- ii. The start date for services and termination date of services;
- iii. The course of treatment;
- iv. The reason for termination;
- v. Discharge medication; and
- vi. The discharge plan.

#### 10:37-12.11 Staffing requirements

(a) Agencies operating children's partial care programs shall employ sufficient numbers of qualified staff to provide the required services.

1. Program staffing shall be based on the clinical needs of the population served. There shall be a written description of the staffing pattern and the roles and responsibilities of staff.

2. For 10 or less youth, at least two direct care staff must be present, except in those cases where there are five or less youth, one staff member may be a volunteer, student intern or non-direct care staff. For more than 10 youths, an additional direct care staff member must be present for each additional group of five youth.

3. There shall be a written schedule for all staff and volunteers providing direct services to youth. This schedule shall be posted and revised weekly or as needed.

4. Each program shall have an individual who meets the qualifications of a program director (see N.J.A.C. 10:37-12.12(b)).

5. The partial care program shall have sufficient availability of psychiatric services so that required psychiatric services are available

for each youth. Each youth's treatment shall be under the direction of a psychiatrist as reflected by psychiatrist participation in the service plan.

6. The agency may utilize student interns, non-direct care staff and volunteers. Such individuals shall not substitute for direct care staff or supervisors.

#### 10:37-12.12 Staffing responsibilities

(a) The responsibilities of the program director shall include, but are not limited to, the following:

1. Planning, identifying and developing children's partial care programs and goals;
2. Providing overall daily management of the children's partial care program;
3. Participating in all relevant county youth's services planning activities (for example, Child Assessment Resource Teams (CARTS) and the Children's Interagency Coordinating Council (CIACCS));
4. Participating in case conferences;
5. Ensuring that the children's partial care program is serving the target population;
6. Ensuring that appropriate treatment and discharge plans are developed;
7. Ensuring that client records are maintained;
8. Providing and ensuring adequate supervision of all staff employed by the children's partial care program;
9. Assuring adequate staffing levels are maintained;
10. Developing and implementing orientation and in-service training programs;
11. Preparing service and budgetary records and submit records to appropriate parties;
12. Establishing internal and external communication systems so that all staff are apprised of pertinent information;
13. Developing and implementing staff orientation, staff development and in-service programs;
14. Ensuring emergency and crisis capability;
15. Ensuring compliance with accepted standards of care;
16. Establishing and maintaining formal and informal affiliation with other needed service providers;
17. Performing related duties as needed and appropriate to the provision of partial care services; and
18. Ensuring that intake assessments are completed.

(b) The program director minimally shall have:

1. An earned master's degree in family therapy, psychology, counseling, social work or other related field from an accredited university; and
2. Three years' experience in the provision of youth's mental health services, at least one of which shall have been in a supervisory capacity.

(c) Agencies operating children's partial care programs shall have access to a psychiatrist whose duties include, but are not limited to, the following:

1. Evaluating, diagnosing, prescribing and, if necessary, dispensing medication to program clients;
2. Providing information and education on medication needs, usage, and side effects to clients and family;
3. Monitoring client's response to prescribed medication;
4. Providing consultation to program staff as appropriate;
5. Providing medical direction to case assessment, treatment plans and service provision;
6. Conducting psychiatric assessments and evaluations as needed;
7. Providing recordkeeping in an accurate and timely manner as required;
8. Maintaining a valid Medicare and Medicaid provider number; and
9. Performing related duties as needed and appropriate to the provision of partial care services.

(d) The psychiatrist minimally shall have:

1. A license to practice medicine in New Jersey;
2. Board eligibility in psychiatry; and
3. Two years' experience in working with youth.

(e) The responsibilities of the direct care professional worker shall include, but are not limited to, the following:

1. Providing the following direct care services:
  - i. Individual and group counseling and support;
  - ii. Activities to address daily living skills;
  - iii. Recreational and socialization activities; and
  - iv. Family services such as referral, advocacy and service linkages;
2. Participating in the development of treatment plans and comprehensive assessments;
3. Participating in the development of discharge plans and making needed referrals;
4. Participating in case conferences;
5. Assisting youth directly to address self-care needs;
6. Providing support to auxiliary staff, student interns and volunteers;
7. Assisting in the development of staff orientation programs;
8. Maintaining clinical documentation; and
9. Performing related studies as needed and appropriate to the provision of partial care services.

(f) The direct care professional worker minimally shall have:

1. An earned bachelor's degree in social work, psychology or related field from an accredited institution; and
2. One year's experience in the provision of children's mental health services.

(g) The responsibilities of the direct care paraprofessional worker shall include, but are not limited to, the following:

1. Being responsible for providing direct child care services;
2. Providing case information to the professional direct care worker;
3. Providing input on cases;
4. Recognizing client behavioral signs indicating potential emergency and taking immediate action by reporting to appropriate staff;
5. Assisting clients in preparing for group activities;
6. Assisting clients in preparing for social and recreational activities;
7. Assisting clients in activities that address daily living;
8. Performing light household duties;
9. Providing transportation; and
10. Performing related duties as needed and appropriate to the provision of partial care services.

(h) The direct care paraprofessional worker minimally shall have:

1. An earned bachelor's degree from an accredited institution, or earned associate's degree and two years' experience in the provision of appropriate services to youth; or
2. A high school diploma and five years' experience in the provision of appropriate services to youth.

(i) Agencies operating children's partial care programs may use volunteers, student interns, and non-direct care staff to support the activities of regular paid staff members.

1. Agencies operating children's partial care programs shall ensure that volunteers, student interns, and non-direct care staff who have contact with youth and parents receive proper training and are supervised by paid staff members. Such training and supervision shall seek to educate and inform the volunteer, intern, non-direct care staff about any special needs or problems they might encounter while working with the youth.

2. The agency shall have written policies and procedures governing the activities of volunteers, student interns and non-direct care staff. These shall clearly articulate roles, responsibilities, and any activity restrictions.

3. Agencies operating children's partial care programs shall require that references be submitted by prospective volunteer, student intern, and non-direct care staff.

## LAW AND PUBLIC SAFETY

(a)

## VIOLENT CRIMES COMPENSATION BOARD

## Compensable Damages

## Proposed Amendment: N.J.A.C. 13:75-1.7

Authorized By: Violent Crimes Compensation Board,

Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1993-68.

Submit comments by March 18, 1993 to:

Amedeo A. Gaglioti, Esq.

Violent Crimes Compensation Board

60 Park Place

Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Violent Crimes Compensation Board claims fund used to compensate victims continues to experience an increase due to collection of assessments imposed by the courts.

By reason of the fact that no modification or adjustment has occurred increasing the maximum reimbursement allowable by the Board for funeral expenses since January 10, 1980, and due to the increasing cost for same, the Board has elected to increase the maximum reimbursement for funeral expenses to \$3,000, for incidents occurring on or after the effective date of this amendment. The purpose of the proposed amendment is to improve benefit potential to innocent victims of crime.

**Social Impact**

No social impact on the Board, claimants or society at large is anticipated from the proposed amendment, the effect of which is economic in nature.

**Economic Impact**

The proposed amendment will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and N.J.S.A. 52:4B-18(d).

The proposed amendment will allow both increased amounts of compensation to innocent victims, by increasing the maximum reimbursement for funeral expenses to \$3,000, for incidents occurring after the effective date of this amendment.

**Regulatory Flexibility Statement**

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq. The proposed amendment increases the maximum reimbursement for funeral expenses payable to individual victims. Therefore, a regulatory flexibility analysis is not required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:75-1.7 Compensable damages

(a)-(d) (No change.)

(e) [In death cases the maximum reimbursement for funeral expenses will be \$750.00. However, for deaths occurring on or after January 10, 1980, the maximum reimbursement shall be \$2,000.00, or such amount as the Board will determine pursuant to N.J.A.C. 13:75-1.3.] **In claims involving the death of a victim, the maximum reimbursement for funeral expenses shall be as follows:**

1. For incidents occurring before January 10, 1980, \$750.00;
  2. For incidents occurring on or after January 10, 1980, \$2,000;
- and

3. For incidents occurring on or after (the effective date of this amendment), \$3,000.

(b)

## VIOLENT CRIMES COMPENSATION BOARD

## Attorney's Fees

## Affidavit of Service

## Proposed Amendment: N.J.A.C. 13:75-1.12

Authorized By: Violent Crimes Compensation Board,

Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1993-69.

Submit comments by March 18, 1993 to:

Amedeo A. Gaglioti, Esq.

Violent Crimes Compensation Board

60 Park Place

Newark, New Jersey 07102

The agency proposal follows:

**Summary**

In an attempt to expedite payment to attorneys for services rendered in direct relation to a claim before the Board, N.J.A.C. 13:75-1.12(c)2 is proposed for amendment. The amendment would increase from \$500.00 to \$1,500 the amount of attorney's fees claimed for which an affidavit of service is required.

**Social Impact**

No social impact on the Board, affected attorneys or society at large is anticipated.

**Economic Impact**

The proposed amendment will have no economic impact on the Board or the victims and claimants applying for compensation. The Board anticipates that, by raising the monetary baseline for the affidavit of service requirement, payments to attorneys for services rendered in direct relation to a claim may be expedited.

**Regulatory Flexibility Statement**

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment reduces the compliance responsibility for claimant's attorneys regarding when an affidavit of service is required. Therefore, a regulatory flexibility analysis is not required.

**Full text** of the proposal follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

13:75-1.12 Attorney's fees

(a)-(b) (No change.)

(c) For all claim applications filed prior to July 1, 1990, attorney's fees shall be computed on an hourly basis and shall not exceed a maximum of \$50.00 per hour.

1. (No change.)

2. The Board shall require an affidavit of service where attorney's fees exceed [ \$500.00 ] **\$1,500**. Said affidavit must include an hourly accounting of work completed by the attorney in direct relation to the claim before the Board.

(d) (No change.)

## TRANSPORTATION

### (a)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

#### Restricted Parking and Stopping

#### Routes N.J. 27 in Union County and N.J. 15 in Morris County

#### Proposed Amendments: N.J.A.C. 16:28A-1.18 and 1.65

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-198.

Proposal Number: PRN 1993-64.

Submit comments by March 18, 1993 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendments will establish a "time limit parking" zone along Route N.J. 27 in the City of Linden, Union County, and "no stopping or standing" zones along Route N.J. 15 in the Town of Dover, Morris County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department received a resolution from the City of Linden in Union County requesting approval for the establishment of a two hour time limit parking zone along Route N.J. 27 from Cranford Avenue to Grant Street; and a resolution from the Town of Dover, Morris County, requesting that a "no stopping or standing" zone be established along both sides of Route N.J. 15 from Davis Avenue north to the corporate limit.

Based upon the requests from the local governments, in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of a time limit parking zone along Route N.J. 27 in the City of Linden, Union County, and "no stopping or standing" zones along Route N.J. 15 in the Town of Dover, Morris County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18 and 1.65 based upon the requests from the local governments and the traffic investigations.

#### Social Impact

The proposed amendments will establish a "time limit parking" zone along Route N.J. 27 in the City of Linden, Union County, and "no stopping or standing" zones along Route N.J. 15 in the Town of Dover, Morris County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for the installation of "time limit parking" and "no stopping or standing" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

#### Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

16:28A-1.18 Route 27

(a)-(d) (No change.)

(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-[199] 198, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

2. In the City of Linden, Union County:

i. (No change.)

ii. **East St. Georges Avenue:**

(1) **Along the west side:**

(A) **Two hour time limit parking from 8:00 A.M. to 6:00 P.M. Sunday through Saturday from Cranford Avenue to Grant Street.**

16:28A-1.65 Route 15

(a) The certain parts of State highway Route 15 described in this subsection shall be designated and established as "no stopping [and] or standing" zones where stopping or standing is prohibited at all times. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.**

1.-2. (No change.)

3. No stopping or standing in the Town of Dover, Morris County:

i.-ii. (No change.)

iii. **Along both sides:**

(1) **From Davis Avenue north to the corporate limits.**

4.-5. (No change.)

## TREASURY-GENERAL

### (b)

#### DIVISION OF PENSIONS AND BENEFITS

#### State Health Benefits Commission

#### Prescription Drug Program

#### Proposed Recodification with Amendments: N.J.A.C.

17:1-10.1 and 10.2 to N.J.A.C. 17:9-8.1 and 8.2

#### Proposed Repeal: N.J.A.C. 17:1-10.3

#### Proposed New Rule: N.J.A.C. 17:9-8.3

#### Proposed Recodification: N.J.A.C. 17:1-11 to N.J.A.C. 17:9-9

Authorized By: State Health Benefits Commission, Patricia

Chiacchio, Acting Secretary.

Authority: N.J.S.A. 52:14-17.27.

Proposal Number: PRN 1993-67.

Submit comments by March 18, 1993 to:

Peter J. Gorman, Esq.

Executive Assistant

Division of Pensions and Benefits

CN 295

Trenton, NJ 08625

The agency proposal follows:

#### Summary

This proposal is being made to align the State Prescription Program with the State Health Benefits Program, in order to comply with the statutory requirement that the Prescription Plan and Dental Plan conform to the State Health Benefits Program. These changes are expected to minimize or eliminate errors in coverage which occur as a result of the currently different termination dates. Errors in COBRA billing will also be prevented, and the prepayment agreements which must be arranged prior to an employee's leave without pay will be facilitated. Additionally, the rules are being recodified to a more appropriate chapter, N.J.A.C. 17:9, as Subchapter 8, since this too will facilitate coordination between the programs.

N.J.A.C. 17:1-11, Dental Expenses Program, while not proposed for amendment at this time, is also proposed for recodification to N.J.A.C. 17:9, as Subchapter 9, since this change will also assist in the coordination of programs.

The amendment to N.J.A.C. 17:1-10.1 deletes the exception for leave of absence situations and conforms the rule to the State Health Benefits standard. The amendment to N.J.A.C. 17:1-10.2 changes the procedure for the issuing of identification cards by the provider from a minimum of once a year to initial enrollment and upon any change in coverage. The requirement that payroll and personnel officers make every effort to obtain a return of the identification card on termination of employment has also been deleted, since current technology would generally eliminate the opportunity for improper use of such a card.

#### Social Impact

The proposed changes will affect, in a positive way, all public employees who participate in the Prescription Drug, Dental and Health Benefits Programs, as well as the Division and the provider staff who administer the programs. The changes are expected to substantially reduce time spent correcting errors in billing, making the administrative processes involved more responsive to the program users.

#### Economic Impact

During the transition period, costs may increase, since program participants would be covered for approximately 15 to 20 days longer than they otherwise would be; however, the benefit to the participants of uninterrupted coverage would outweigh this temporary cost. While the Division cannot predict the number of such occurrences, and therefore cannot accurately estimate the costs to the State, the total number of instances is expected to be small. The overall benefit, in terms of increased efficiency, cannot be determined exactly, but is expected to be significant.

#### Regulatory Flexibility Statement

The proposed amendments make changes in the manner of administration of the public employees' benefits plan, which includes dental, prescription, and general health services. Those affected include public employees and the administrative service provider. In no case are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., affected. Therefore, a regulatory flexibility analysis is not required.

**Full text** of the proposed recodification of the Dental Expenses Program can be found in the New Jersey Administrative Code at N.J.A.C. 17:1-11.

**Full text** of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### [17:1-10.1]17:9-8.1 State Prescription Drug Program comparable to State Health Benefits Program

In accordance with the guidelines issued by the State Health Benefits Commission under terms of Chapter 12, Public Law 1975, and as those guidelines establish eligibility for coverage, the opportunity for an annual enrollment period, continuation of coverage during a leave of absence without pay, and circumstances concerning the change in, or the termination of, coverage on a basis identical to that of the State Health Benefit Program as administered by the [commission] Commission in accordance with the provisions of Chapter 49, Public Law 1961, as such apply to active State employees, the administration of the State Prescription Drug Program shall in all possible respects be identical to the State Health Benefits Program for such State employees. Any enrollment, application for a change in, or a termination of, coverage in the State Health Benefits Program shall be considered for a comparable result in the State Prescription Drug Program, except for the lack of rights of conversion [and coverage continued during an approved leave of absence without pay for an illness of not more than three months (six biweekly pay periods)]. The annual enrollment period, or the effective date of coverage in the State Health Benefits Program for State employees shall likewise pertain to the State Prescription Drug Program.

#### [17:1-10.2]17:9-8.2 Prescription drug cards and booklets

(a) [Identification cards and booklets must be reissued at least once in every contract year.] **All identification cards shall be issued by the carrier upon initial enrollment or change of coverage.** Each

issue shall reflect the bargaining unit in which the State employee participates [at the time the cards are to be duplicated. All other cards will be issued by the carrier during the contract year upon the initial enrollment or change of coverage]. All cards and booklets will be distributed through the payroll and personnel officers. [During the contract year, requests] **Requests** for the general booklet shall be made to the [division] Division. [Upon termination of employment, payroll and personnel officers shall make every effort to obtain a return of the identification card.]

#### 17:1-10.3 [Termination; effective date] (Reserved)

[Coverage shall terminate on the last day of the biweekly or monthly payroll period in which the employee rendered active full-time employment.]

#### 17:9-8.3 Termination; effective date

(a) **The effective date of termination shall be the last day of the coverage period corresponding to the payroll period or month in which the last payroll deduction was made from the employee's salary for the coverage of dependents, if any are required, or the last charge shall have been paid by the State for employee's and/or his or her dependents' coverage or by the local employer for the employee and/or his or her dependents, as the case may be.**

(b) **Eligibility shall be terminated as follows:**

1. **In the case of leave of absence without pay, the coverage of an eligible employee and of an employee's dependents during any period of authorized leave of absence without pay shall terminate on the last day of the second coverage period following the last payroll period or month for which the employee received a salary payment; except that coverage of such employee and such employee's dependents may be continued by such employee, provided that the employee shall pay in advance the total charge required for the employee's coverage and coverage of the employee's dependents during such period of authorized leave of absence without pay; provided that no period of continued coverage, as provided above, shall exceed a total of 20 biweekly payroll periods, or nine months, during which the employee receives no pay.**

2. **In the event that an employee's active full-time employment shall cease and employee shall become a "part-time" employee, such employee's coverage, and the coverage of such employee's dependents, shall be terminated.**

3. **An employee whose coverage terminated as a result of a change from full-time to part-time status cannot be reenrolled until he or she has reestablished his or her eligibility for coverage by serving the normal waiting period as prescribed for new enrollees. In no event will the waiting period include any part-time service rendered by the employee.**

4. **The coverage of an employee whose eligibility has ceased because of his or her resignation, temporary layoff, separation through a reduction in force, or any other reason, and the coverage of his or her dependents, shall be terminated.**

5. **An employee, who has an award pending, or who received an award of periodic benefits under Workers' Compensation, may continue his or her coverage and the coverage of his or her dependents, provided that the employee shall pay to his or her employer in advance that portion, if any, of the charges due from the employees to continue the coverage under his or her existing coverage.**

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Gross Income Tax

#### Partnerships; Net Profits from Business

#### Proposed Repeal and New Rule: N.J.A.C. 18:35-1.14

#### Proposed New Rule: N.J.A.C. 18:35-1.25

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a).

Proposal Number: PRN 1993-63.

Submit comments by March 18, 1993 to:

Nicholas Catalano  
Chief, Tax Services  
Division of Taxation  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

#### Summary

On April 1, 1991, the Division of Taxation, at 23 N.J.R. 950(b), proposed amendments to N.J.A.C. 18:35-1.14 and a new rule, N.J.A.C. 18:35-1.25, which addressed the taxability of partners and partnerships pursuant to the Gross Income Tax Act, N.J.S.A. 54A:1-1, et seq., consistent with the ruling of the New Jersey Supreme Court in *Smith v. Director, Division of Taxation*, 108 N.J. 19, 527 A.2d 843 (1987). Prior to the *Smith* decision, the partnerships rule (N.J.A.C. 18:35-1.14) required each partner to report on the NJ-1040 his or her share of the gross amount of all interest and dividend income and gains or losses from disposition of property either earned or incurred by the partnership. The rule also required each individual partner to report such income (interest, dividend, gains or losses from disposition of property) in the appropriate category of income rather than to include it in the distributive share of partnership income category. The *Smith* case held that the application of paragraph (c)4 of the partnerships rule (N.J.A.C. 18:35-1.14(c)4) was inconsistent with legislative intent with respect to dividend and interest income and gains and losses from disposition of property realized by a securities partnership in the ordinary course of its securities business.

The Division received commentary responsive to the proposed rules. The commentary recommended various modifications to the proposed amendments. The commentary also recommended the promulgation of an agency interpretation of the statutory term "net profits from business," in that such a term both plays an important role in the taxability of individual taxpayers and indirectly bears on the taxation of partners and partnerships. The commentary also recommended various technical corrections to the proposed amendments and to other provisions of existing N.J.A.C. 18:35-1.14. Upon consideration of this commentary, the Division had determined not to adopt the amendments as then proposed. Instead, the Division is proposing the repeal and new rules below.

Pursuant to proposed new rule N.J.A.C. 18:35-1.14, the term "partnership" is intended to encompass all entities which are characterized as partnerships for Federal income tax purposes and to exclude entities which are not so characterized. In addition, the new rule clarifies that a proper election out of Subchapter K of the Internal Revenue Code by an unincorporated entity for Federal income tax purposes (see IRC §761(a)) will be respected for gross income tax purposes.

The proposed new rule makes it clear that the gross income tax is imposed only on partners and not on partnerships. New Jersey resident partners are subject to gross income tax on their respective distributive shares of the categories of New Jersey gross income realized by their partnerships, from whatever source derived. Nonresident partners are subject to gross income tax on their respective shares of such gross income only to the extent such income is derived by their partnerships from sources within New Jersey. A partnership engaged in business both within and outside of New Jersey is required to allocate its items of income, gain, expense and loss between New Jersey and non-New Jersey sources by use of the New Jersey Business Apportionment Schedule, unless the partnership establishes to the Director's satisfaction that an alternate method of allocation would be more appropriate and the Director gives prior approval to the partnership's use of the alternative method of allocation.

Pursuant to the proposed new rule, partners are subject to gross income tax on their distributive shares of the categories of New Jersey gross income realized by their partnerships in the following manner:

Each partnership is first required to compute its New Jersey gross income on a category-by-category basis in the same manner as would an individual taxpayer. Each partner is then required to report as his or her "distributive share of partnership income" the sum of his or her distributive share of the net profits (or loss) of his or her partnership derived from the conduct of a trade of business, plus the partner's guaranteed payments from the partnership. Unreimbursed partnership expenses incurred by the partner are not deductible by the partner in determining his or her distributive share of partnership income. Each partner also is required to report his or her distributive share of every other category of gross income realized by his or her partnership, as items of income attributable to such other categories of gross income, in the same manner as if such items had been realized directly by the partner. Generally, each partnership is to determine its net profits (or loss) derived from the conduct of a trade or business in the same manner as an individual would determine his or her "net profits from business" pursuant to N.J.A.C. 18:35-1.25, also proposed below.

The proposed new rule anticipates that a given partnership may be engaged in two or more unrelated activities which each constitute a trade or business. In such event, the income and expenses of all such activities are to be reported on a net consolidated basis. However, a partnership may not consolidate its net profit (or loss) from any activity which constitutes a trade or business with the partnership's unrelated items of income or expense which are properly allocable to other categories of New Jersey gross income.

The proposed new rule anticipates that a given taxpayer may be a member of more than one partnership. In such event, the partner must report his or her distributive shares of partnership income (or loss) from all his or her partnerships on a net consolidated basis. However, the taxpayer may not report his or her distributive share of partnership income (or loss) on a consolidated basis with his or her items of income or loss attributable to any other category of New Jersey gross income, including his or her net profits (or loss) from business attributable to activities not conducted in partnership format.

The proposed new rule contains eight examples. The proposed new rule also contains provisions applicable to partners and partnerships having different taxable years and to part-year resident partners. In addition, the filing requirements for partners and partnerships are clarified. Provisions relating to the tax treatment of partnership contributions to Keogh Plans and distributions by such plans to partners are also set forth, essentially without change from the existing rules.

Proposed new rule N.J.A.C. 18:35-1.25 defines the statutory term "net profits from business" as the net income derived by a taxpayer from the conduct of any income producing activity which constitutes a trade or business for tax purposes, taking into account all income derived from the conduct of such activity, regardless of its source or character, as well as all expenses and costs incurred in the conduct of such activity (other than certain specifically listed expenditures for which no deduction is allowed).

This proposed new rule does not define the term "trade or business." Such term shall continue to comprehend those activities which are conducted by a taxpayer with continuity and regularity for the primary purpose of realizing income or profit and which would be characterized generally as a trade or business for Federal income tax purposes. See *Comm'r v. Groetzinger*, 480 U.S. 23 (1987); *Walsh v. Taxation Div. Director*, 4 N.J. Tax 107 (Tax Ct. 1982); *Applestein v. Director, Division of Taxation*, 5 N.J. Tax 73 (Tax Ct. 1982), *aff'd* 6 N.J. Tax 347 (App. Div. 1984); *Marrinan v. Division of Taxation, Director*, 10 N.J. Tax 542 (Tax Ct. 1989).

The proposed new rule clarifies when interest, dividends, rental income, royalty income, income from patents and copyrights, and gains and losses from the sale or disposition of property will be deemed to have been realized in the conduct of a trade of business and when such items will be taxable as separate categories of gross income. The proposed new rule also clarifies that business expenses will be fully deductible in determining a taxpayer's net profits from business, even if such expenses may be wholly or partly nondeductible for Federal income tax purposes or were incurred in earning business income exempt from tax under the Gross Income Tax Act.

The proposed new rule anticipates that a given taxpayer may be engaged in more than one trade or business. In such event, the taxpayer's income and expenses from all such activities are to be reported on a net consolidated basis.

**Social Impact**

The proposed repeal and new rules directly impact only the business community, specifically those who are members of partnerships. However, the impact is minimal because the proposed rules merely serve to codify and clarify existing law and policies and the application of the *Smith* decision, discussed in the Summary above. Nevertheless, it is possible that the rules as proposed, by virtue of the information being more public, could influence taxpayers in their decisions concerning what form a business should take or keep (that is, partnership, corporation or sole proprietorship).

**Economic Impact**

Since the main purpose and effect of the proposed repeal and new rule is to merely clarify existing law and policies, the economic impact should be small. On one hand, because of clarifications on the deductibility of certain expenses and on the ability to report certain income as trade or business income, the rules could result in a slight decrease in the net income figures for partnership and trade or business income. Therefore, the new rules could slightly decrease State revenues. On the other hand, those economic effects could be somewhat offset by the effects of partners reporting income more accurately.

**Regulatory Flexibility Analysis**

The proposed new rules address the reporting of income by individual partners. However, N.J.A.C. 18:35-1.14(f) imposes a filing requirement, in addition to those currently imposed, on partnerships having a New Jersey resident partner or having any income derived from New Jersey sources. In keeping with the *Smith* decision, any such partnership which for Federal income tax purposes includes interest or dividends in the ordinary income or loss of the partnership is required to annex to its tax return filed with the Division a statement such as that described in proposed N.J.A.C. 18:35-1.25(b)2 which justifies the inclusion of such income in the partnership ordinary income or loss for New Jersey Gross Income Tax purposes. If such statement is not annexed to its return, a partnership is required to separately state on its return the full amount of its dividend and interest income. Although some such partnerships may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Division considers the information required to be necessary for efficient tax collection. As the cost to produce such statements should not be significant, nor require the services of tax professionals in addition to those otherwise employed, no lesser requirements or exemptions are provided for partnerships based on business size.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:35-1.14.

**Full text** of the proposed new rules follows:

**18:35-1.14 Partnerships and partners**

(a) The following words and terms, when used in this section, shall have the following meanings:

1. "Partnership" means and shall include a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the New Jersey Gross Income Tax Act. "Partnership" shall not include:

- i. A publicly traded partnership;
- ii. A limited partnership association;
- iii. An unincorporated organization whose members properly elect to exclude such organization from the application of Subchapter K of Subtitle A of the Internal Revenue Code; or
- iv. Any other entity which is not taxed as a partnership for Federal income tax purposes.

2. "Partner" means and shall include any person or entity subject to the Gross Income Tax who shall be a member of a partnership, whether as a general partner or a limited partner.

(b) Partners, not partnerships shall be subject to tax and resident and non-resident partners treated as follows:

1. A partnership as such is not subject to the Gross Income Tax. However, each partner of a partnership shall be subject to Gross Income Tax on his or her distributive shares of the categories of New Jersey gross income, whether or not distributed, realized by the partnership for its taxable year ending within or with such partner's taxable year. Each partner shall account for and report

his or her distributive shares of the partnership's categories of New Jersey gross income in the manner provided in (c) below.

2. A partner who is a resident taxpayer of New Jersey shall report and be subject to Gross Income Tax upon such partner's full distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, regardless of the sources from which such income was derived by each such partnership.

3. A partner who is a nonresident taxpayer of New Jersey shall report and be subject to tax upon the distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, but only to the extent such income was derived by the partnerships from sources within New Jersey.

i. Where a partnership's business is carried on solely within New Jersey, all items of the income, gain, expenses or losses of the partnership are deemed to have been derived from sources within New Jersey.

ii. Where a partnership's business is carried on both within and outside of New Jersey, the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey shall, except as provided in (b)3iii below, be determined by use of the New Jersey Business Apportionment Schedule (Form NJ-1040-NR-A), as prepared by the partnership.

iii. Where a partnership's business is carried on both within and outside of New Jersey, and the partnership believes that the determination of the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey by use of the New Jersey Business Apportionment Schedule does not provide an equitable allocation of such items to sources within and outside of New Jersey, and the books and records of the partnership will disclose to the Director's satisfaction a more appropriate method of allocation of such items, the partnership may request from the Director an exception from the use of the New Jersey Business Apportionment Schedule. Any such request shall be made in writing and shall set forth the basis of the request and the substitute method of allocation requested to be used in lieu of use of the New Jersey Business Apportionment Schedule. The substitute method of allocation may not be utilized prior to the submission of the partnership's exception request and the approval of such request by the Director.

(c) The determination of a partner's distributive shares of the partnership's items of gross income shall be as follows:

1. Each partnership which has one or more New Jersey resident partners, or which derives any item of gross income from sources within New Jersey, shall compute its New Jersey gross income in the same manner as would an individual taxpayer. Such gross income shall be allocated according to its character among the categories of gross income specified in N.J.S.A. 54A:5-1. Each partner's respective distributive shares of the partnership's various categories of gross income shall be determined by the partnership agreement of the partnership in the same manner the partner's distributive share of partnership income is determined for Federal income tax purposes.

2. Each partner shall report as such partner's "distributive share of partnership income" described in N.J.S.A. 54A:5-1k the net aggregate amount of:

i. The partner's distributive shares of the net profits (or loss) from each partnership of which such partner is a member derived from the conduct by such partnership of a business, profession or other income-producing activity, provided such business, profession or income-producing activity constitutes the conduct of a trade or business, plus

ii. The amount of the partner's guaranteed payments, as determined for Federal income tax purposes, from each partnership of which such partner is a member.

3. A partnership shall determine its net profits (or loss) from the conduct of a business, profession or other income-producing activity for purposes of this subsection in the same manner an individual taxpayer determines his or her "net profits from business" pursuant to N.J.A.C. 18:35-1.25, provided, however, in the case of tiered partnerships, a partnership shall take into account its distributive share of partnership income from any partnership of which it is a member.

4. Each partner shall report such partner's distributive shares of each category of New Jersey gross income of the partnership, other than the partnership's net profits (or loss) from the conduct of a business, profession or other income-producing activity described in (c)2 and 3 above, as an item of income attributable to such category of gross income in the same manner as if the partner had derived such item of gross income directly from sources other than a partnership. Each such item of gross income attributable to any category of gross income shall be reported on a consolidated basis with the partner's other items of gross income which are attributable to such category and which are derived from sources other than a partnership.

5. In the case of any category of gross income which pursuant to the Gross Income Tax Act is to be determined on a net income basis, a partner's distributive share of partnership income, gain, loss or expense attributable to such category shall be reported on a net consolidated basis with the partner's items of income, gain, loss or expenses derived from sources other than a partnership which also are attributable to the same category of gross income.

6. A partner may not report a distributive share of partnership income or loss on a consolidated basis with the partner's net income or loss from business derived from sources other than a partnership.

7. In determining a partner's distributive share of partnership income or loss, no deduction is allowed for expenses which are not incurred by the partnership.

8. The provisions of this section are illustrated by the following examples:

**Example 1:** A partnership shows the following income on its Federal Partnership Return of Income (Form 1065):

Partnership ordinary income (derived from the conduct of a trade or business):	\$25,000
Included in the partnership's ordinary income is interest income of \$500 derived from U.S. Treasury bills and excluded from the partnership's ordinary income is interest income of \$300 derived from State of New York bonds	
Dividend income (non-business source):	1,200
Long term capital gain on sale of partnership capital assets:	1,000
<b>Total</b>	<u>\$27,200</u>

Partner A has a 50 percent interest in the partnership and is entitled to a 50 percent share of partnership profits or losses. How does partner A report his share of the partnership income or gain on his New Jersey Form NJ-1040?

Partner A reports this income for New Jersey Gross Income Tax purposes as follows:

Distributive share of federal partnership ordinary income	\$12,500
Adjustments for New Jersey Gross Income Tax purposes:	
Add: Interest on New York State bonds	150
	<u>\$12,650</u>
Deduct: Interest on U.S. Treasury bills	(250)
Partner A's distributive share of partnership income:	\$12,400
Dividends:	600
Net gains from disposition of property:	500
<b>Total New Jersey Gross Income:</b>	<u>\$13,500</u>

**Example 2:** A taxpayer has the following income:

Distributive share of partnership income, including \$5,000 of guaranteed payments:	\$12,000
Distributive share of partnership capital gain (non-business):	2,000
Salary and wages from employment:	15,000
Capital loss on sale of individually owned stock:	(4,000)

How is this reportable for New Jersey gross income tax purposes on taxpayer's Form NJ-1040?

The taxpayer will report this income for New Jersey Gross Income Tax purposes as follows:

Salary and wages from employment:	\$15,000
Distributive share of partnership income:	12,000
Capital loss on sale of individually owned stock:	(\$4,000)
Plus: Distributive share of partnership gain:	<u>2,000</u>
Net gain from disposition of property:	0†
<b>Total New Jersey gross income</b>	<u>\$27,000</u>

†Note: The taxpayer may offset the capital loss on the sale of individually owned stock against his distributive share of the partnership's capital gain, but may not apply the resulting net loss from the disposition of property against income attributable to other categories of New Jersey gross income.

**Example 3:** A taxpayer has the following income:

Salary and wages from employment:	\$10,000
Distributive share of partnership loss:	(3,000)
Distributive share of partnership capital loss (non-business):	(2,000)
Capital gain on sale of individually owned stock:	5,000

How is this income reportable for New Jersey Gross Income Tax purposes on Form NJ-1040?

Salary and wages from employment:	\$10,000
Gain on sale of stock:	\$5,000
Less: Share of partnership capital loss	<u>(2,000)</u>
Net gains or income from disposition of property:	3,000
Distributive share of partnership income:	0†
<b>Total New Jersey gross income</b>	<u>\$13,000</u>

†Note: The taxpayer cannot apply his distributive share of partnership loss against his income attributable to other categories of New Jersey gross income. The taxpayer may only net a distributive share of a partnership loss against a distributive share of partnership income derived from another partnership.

**Example 4:** The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in the practice of medicine contained the following information:

Partnership net ordinary income (all of which is derived from business activities):	\$25,000
Interest income realized on money market accounts holding required working capital	300
Interest income realized on security deposits held by lessors pertaining to medical equipment leased by the partnership and used in its trade or business	100
Portfolio (i.e., non-business) income:	
Interest (Includes \$500 from U.S. Treasury bills and does not include \$300 from New York State bonds held by the partnership):	1,800
Dividends:	1,200
Royalties:	500
Net long term capital gain:	600
Gain on the sale of property described in I.R.C. §1231	400

The taxpayer will report this information on his NJ-1040 as follows:

Distributive share of partnership income:	
Business ordinary income	\$25,000
Interest on working capital	300†
Interest on security deposits	<u>100</u>

**TREASURY-TAXATION**

**PROPOSALS**

Net distributive share of partnership income reportable on NJ-1040:		25,400
Interest:	1,800	
Adjustments:		
Less interest income from U.S. Treasury bills	(500)	
Plus interest income from New York State bonds	<u>300</u>	
Interest income reportable on NJ-1040:		1,600
Dividends:		1,200
Net income from rents, royalties, etc.:		500
Gains from disposition of property:		
Long term capital gain	600	
§1231 gain	<u>400</u>	
Net gains from disposition of property:		1,000

†Note: Interest income realized by the partnership with respect to its working capital and security deposits may be taken into account in determining the partnership's net income or loss from trade or business only if the partnership annexes to its tax return the statement described in N.J.A.C. 18:35-1.14(f)4. Absent such statement, the interest income must be separately reported as "interest" by the partnership and will be taxable to the partners as "interest."

**Example 5:** The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in a trade or business of dealing in and trading securities contained the following information:

Partnership net ordinary income (all of which is derived from business activities):		\$25,000
Other classes of partnership income:		
Interest (Includes \$500 from U.S. Treasury bills and does not include \$300 from New York State bonds) (realized in the ordinary course of business):	1,800	
Dividends (realized in the ordinary course of business):	1,200	
Trading gains treated as capital gain (realized in the ordinary course of business):	600	
Net gain under I.R.C. §1231:	400	
Royalties (non-business):	500	

The taxpayer will report this income on his NJ-1040 as follows:

Partnership items of income derived from the conduct of a trade or business:		
Partnership net ordinary income:	\$25,000	
Interest:	1,800	
Dividends:	1,200	
Net trading gains treated as capital gain:	<u>600</u>	
	\$28,600	
Adjustments:		
Interest income from U.S. Treasury bills	(500)	
Interest income from New York State bonds	<u>300</u>	
	(200)	
Distributive share of partnership income:		\$28,400
Net Gains from the disposition of property:		
§1231 Gain	400	
Net income from rents, royalties, etc.:		500

**Example 6:** Taxpayer is a partner in two partnerships. Partnership A is a medical partnership and Partnership B is a securities partnership. Each partnership's activities constitute an active trade or business. The Federal Schedules K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership net ordinary income	\$100,000†	(\$240,000)†
Other income:		
Interest:	5,000††	1,000†
Dividends:	—	25,000†
Capital gain:	12,000††	20,000†
Net gain or loss under I.R.C. §1231		(5,000)††

The taxpayer also incurred with respect to his partnerships the following unreimbursed business expenses:

	15,000	8,000
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†Business income.  
††Non-business income.

The Taxpayer will report this income on his NJ-1040 as follows:

<b>Partnership A</b>		
Partnership Ordinary Income		\$100,000
<b>Partnership B</b>		
Partnership net ordinary income	(240,000)	
Interest	1,000	
Dividends	25,000	
Capital gain	<u>20,000</u>	
	(194,000)	
	( 94,000)	

Distributive share of partnership income:		0†
Interest income (Partnership A):		5,000
Gains from disposition of property:		
Capital gain (Partnership A)	12,000	
§1231 loss (Partnership B)	(5,000)	
Net gain from disposition of property:		<u>7,000</u>

†Note: Taxpayer would report "0" on the line of his NJ-1040 calling for the taxpayer's distributive share of partnership income. However, if the taxpayer had been a partner of a third partnership, up to \$94,000 of the taxpayer's distributive share of income realized by the third partnership from the conduct of a trade or business could be offset by the net \$94,000 loss from Partnerships A and B.

**Example 7:** The Federal form Schedule K-1 (Form 1065) issued to a New Jersey resident partner of a partnership actively engaged in the practice of law in New York contained the following information:

Partnership net ordinary income:		\$10,000
Guaranteed payments:		5,000
Interest (Includes \$2,000 from U.S. Treasury bills and does not include \$2,000 from New York State bonds) (non-business):		5,000
Net gain under I.R.C. §1231:		4,000
I.R.C. §179 deduction:		1,000
Taxes based on income (UBT):		2,000
Expense incurred to carry New York State bonds:		1,000
Keogh deduction:		2,000
Charitable contributions (non-business):		3,000

The taxpayer also incurred unreimbursed business expenses with respect to his partnership in the amount of \$3,000.

The taxpayer will report this information on his NJ-1040 as follows:

Partnership net ordinary income	\$10,000	
Guaranteed payments	<u>5,000</u>	
	\$15,000	
Adjustments		
Taxes Based on Income	2,000	
§179 Deduction	<u>(1,000)</u>	
	1,000	
Distributive share of partnership income:		16,000†

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TREASURY-TAXATION**

Interest income		
Adjustments:	5,000	
Interest income from U.S. Treasury bills	(2,000)	
Interest income from New York State bonds	2,000	
Net Adjustments:	<u>-0-</u>	
Interest:		5,000††
Net Gains from the disposition of property:		
§1231 Gain		4,000

†Note: Keogh Plan contributions for partners, charitable contributions not deductible under I.R.C. §162 and unreimbursed business expenses are not deductible for Gross Income Tax purposes.

††Note: The cost to carry the New York State bonds cannot be deducted because the expense was not incurred in the ordinary course of a trade or business conducted by the partnership.

**Example 8:** The taxpayer is a New Jersey resident who is a partner in two partnerships. Partnership A is a New York based securities partnership and Partnership B is a New Jersey based accounting partnership. Each partnership's activities constitute an active trade or business. The Federal forms Schedule K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership Ordinary Income:	(\$10,000)†	(\$15,000)†
Guaranteed payments:	2,000	
Interest:	8,000†	3,000††
Interest from U.S. Treasury Bills included in the interest above	7,000†	
Interest from Pennsylvania State bonds not included in interest above	5,000†	
Dividends:	5,000†	
Net short term capital gains or losses:	(2,000)†	
Net long term capital gains or losses:	18,000†	(1,000)††
Net Gain under §1231:	1,500††	
Taxes based on income (UBT):	2,500†	
Cost to carry Pennsylvania bonds:	1,000†	
Keogh deductions:	2,000	
Charitable contribution incurred as a business expense:		3,000

†Business income.  
††Non-business income.

The taxpayer is also a shareholder in a New York S corporation. The Schedule K-1 issued by the S corporation showed an ordinary loss of (\$5,000)†.

The taxpayer will report this information on his NJ-1040 as follows:

<b>Partnership A</b>	
Partnership ordinary income	(10,000)
Guaranteed payments	2,000
Interest	8,000
Dividends	5,000
Net short term capital loss	(2,000)
Net long term capital gain	<u>18,000</u>
	\$21,000
Adjustments:	
Interest income from U.S. Treasury Bills	(7,000)
Interest income from Pennsylvania State Bonds	5,000
Taxes based on income	2,500
Cost to carry Pennsylvania bonds	<u>(1,000)</u>
	(500)
Distributive share of partnership income from Partnership A:	20,500

<b>Partnership B</b>	
Partnership ordinary income	(15,000)
Charitable contribution incurred as a business expense:	(3,000)
Adjustments:	<u>-0-</u>
Distributive share of partnership loss from Partnership B	(18,000)
Distributive share of partnership income: Interest (Partnership B):	2,500
Gains from disposition of property:	3,000
Net gain under §1231 (Partnership A)	1,500
Net long term capital loss (Partnership B)	<u>(1,000)</u>
Net gains from the disposition of property:	500

†Note: S Corporation status is not recognized for New Jersey Gross Income Tax purposes. An S Corporation shareholder's share of the corporation's loss is not deductible for New Jersey Gross Income Tax purposes.

(d) If a partner's taxable year differs from that of the partnership, the partner is to report the partner's distributive share of income, gain or loss for the taxable year of the partnership which ends with or within his or her taxable year.

**Example 1:** A partner's taxable year ends on December 31, 1979, while the partnership's fiscal year ends on June 30, 1979. The partner is to report the partner's entire distributive share of the income, gain or loss from the partnership's taxable year ended June 30, 1979 on the partner's 1979 NJ-1040.

(e) The following apply to partners who are part-year residents:  
1. A partner who is a resident taxpayer for part of any taxable year and a nonresident taxpayer for part of such taxable year is required to report his or her distributive share of partnership income as follows:

i. The part-year resident return shall include:  
(1) The portion of the partner's distributive share of partnership income determined by multiplying the partner's entire distributive share of partnership income (including guaranteed payments) by the percentage which the number of days of the partnership's fiscal year that the partner was a New Jersey resident bears to 365; plus

(2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership during the period covered by the return.

ii. The part-year nonresident return shall include:  
(1) The portion of the partner's distributive share of partnership income as follows:

(A) If the distributive share of partnership income was derived entirely from New Jersey sources, the portion of that distributive share of partnership income (including guaranteed payments) determined by multiplying the partner's entire distributive share of partnership income by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; or

(B) If the distributive share of partnership income was derived partly within New Jersey and partly outside New Jersey, the portion of such distributive share determined by multiplying the partner's entire distributive share of partnership income derived by the partnership from sources within New Jersey (determined as provided in (b)3ii or (b)3iii above), by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; and

(2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership and derived from New Jersey sources during that period covered by the return.

2. If the partner can demonstrate to the Director's satisfaction that the above reporting method does not properly reflect the partner's reportable income, gains and losses incurred during the partner's periods of residency and nonresidency, then the partner may allocate to the part year resident and part year nonresident returns the portions of the partner's distributive share of partnership income realized by the partnership during each such period.

3. In all cases, a partner who is a resident taxpayer for part of the tax year and a nonresident taxpayer for the remainder of the tax year must attach a schedule to the partner's part year NJ-1040 and the part year NJ-1040-NR showing the calculations used to determine the amounts reported on each return with respect to income, gains, or losses of a partnership.

(f) Partnership filing requirements are as follows:

1. Partnerships having a New Jersey resident partner or having any income derived from New Jersey sources shall file with the Division a complete copy of the Federal Form 1065, U.S. Partnership Return of Income, required to be filed with the Internal Revenue Service, along with the requisite schedules and attachments. Such information filing must be made on or before the date of expiration of the permitted filing period for the partnership's Federal Form 1065, including any extensions of such period allowed for Federal income tax purposes.

2. Except as may be authorized by the Director pursuant to (b)3iii above, every partnership which derives income both from sources within and outside of New Jersey and which has one or more nonresident partners shall complete a New Jersey Business Apportionment Schedule (NJ-1040-NR-A). The partnership shall attach a copy of the Schedule to the Federal Form 1065 which it files with the Division, and must also provide a copy of the Apportionment Schedule to each nonresident partner.

3. Each partnership shall distribute to each of its partners their respective Schedule K-1 of the partnership's Federal Form 1065. Each partnership also shall distribute to any partner requesting same any materials required to be filed by the partner with the partner's return pursuant to (g) below.

4. Any partnership which for Federal income tax purposes includes interest or dividends in the ordinary income or loss of the partnership, shall annex to its tax return which it files with the Division a statement such as that described in N.J.A.C. 18:35-1.25(b)2 which justifies the inclusion of such income items in the partnership's ordinary income or loss for New Jersey Gross Income Tax purposes. Any partnership which fails to annex such a statement to its return shall separately state on its return the full amounts of its dividend and interest income.

(g) Partner filing requirements are as follows:

1. Each nonresident taxpayer who is a partner in a partnership having income, gains or losses derived from New Jersey sources shall, for each such partnership, include a copy of each of the following with the partner's New Jersey non-resident tax return:

- i. The partner's Federal Schedule K-1;
- ii. Reconciliation of his or her share of partnership income as determined for Federal income tax purposes, in accordance with (c) above; and
- iii. The partnership's New Jersey Business Apportionment Schedule (NJ-1040-NR-A), as provided by the partnership.

2. Each resident taxpayer shall include a copy of each of the items specified in (g)1i through iii above, for each partnership in which the taxpayer is a partner, regardless of the source from which the partnership's income, gains, or losses are derived.

(h) The following apply to Keogh Plans:

1. Partnership contributions to a Keogh Plan made on behalf of employees of the partnership and which are deductible as ordinary and necessary business expenses for Federal income tax purposes also shall be deductible for New Jersey Gross Income tax purposes in determining the net income of the partnership. The employees on whose behalf such contributions were made are not subject to gross income tax on the amounts contributed in the taxable year in which they are contributed to the Keogh Plan, unless withdrawn in such taxable year by the employees from the Plan. The employees are not considered to have actually or constructively received the contributions at the time they were made to the Keogh Plan. When an employee makes a withdrawal from the Keogh Plan, both the untaxed employer contribution and accumulated interest earned thereon are taxable to the employee.

2. Partnership contributions to a Keogh Plan made on behalf of a partner are not deductible business expenses. Such contributions are to be taken into account in determining the distributive shares

of partnership income of the individual partners for New Jersey gross income tax purposes in the taxable years in which they are contributed to the Keogh Plan. Previously taxed employer contributions to a Keogh Plan are not subject to tax when subsequently withdrawn by the partners.

3. The interest income accumulated on the Keogh Plan contributions made by the partnership on behalf of the partners is not subject to tax during the period of a partner's participation. Such interest shall become taxable when the partner withdraws it from the Keogh Plan. When a partner makes periodic withdrawals, the accumulated interest in the Keogh Plan is subject to tax in the ratio that the interest bears to the total amount in the partner's account.

4. The provisions of this subsection are illustrated by the following examples:

<u>Example 1:</u> A partner's accumulated Keogh contributions held in his account:	\$7,500
Accumulated interest in partner's Keogh account:	500
Total amount in partner's Keogh account:	\$8,000

Assume periodic payments to the partner from the account during the taxable year of \$1,600.

The amount of interest withdrawn would be calculated as follows:

$$\frac{\$ 500}{\$8,000} \times \$1,600 = \$100$$

Note: Under the above facts, if a periodic withdrawal of \$1,600 were made by an employee (rather than by a partner) during the taxable year, the full amount of \$1,600 is subject to tax since the employer contribution component of the amount withdrawn was not includable in the employee's income at the time the partnership made the contribution on his behalf.

Example 2: A partnership makes a contribution to a Keogh Plan on behalf of the partners for \$3,000 and on behalf of the employees for \$4,500. The partnership may deduct the \$4,500 contribution on behalf of the employees as a business expense for the taxable year and the employees will not include the \$4,500 as income until withdrawal is made from the Keogh Plan. The partnership cannot deduct the \$3,000 contribution made on behalf of the partners as a business expense for the taxable year. Each partner must include the portion of the \$3,000 contribution made on his behalf in his computation of his distributive share of partnership income in the taxable year the contribution was made. The amount of the contribution thus taxed to the partner will not again be taxable to the partner when such moneys are withdrawn by the partner from the Keogh Plan.

18:35-1.25 Net profits from business

(a) Each taxpayer is subject to gross income tax on the taxpayer's "net profits from business" within the meaning of N.J.S.A. 54A:5-1b, which shall be determined as provided in this subchapter.

(b) A taxpayer's net profits from business shall be determined by taking into account all income of the taxpayer derived from the conduct of a business, profession or any other income-producing activity, provided such business, profession or other income-producing activity constitutes the conduct of a trade or business. Such income shall be taken into account in determining the taxpayer's net profits from business, regardless of its source or character, provided it is directly attributable to the conduct of a trade or business by the taxpayer. All other income of the taxpayer which is subject to gross income tax, that is, that which is not directly attributable to the conduct of a trade or business, shall be included in one or more of the other categories of gross income specified in N.J.S.A. 54A:5-1 according to its character and shall not be includable in the category of income "net profits from business."

1. Income derived by a taxpayer in the taxpayer's capacity as an employee shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed as salary, wages, etc., described in N.J.S.A. 54A:5-1a. Income derived by a self-employed taxpayer as remuneration for services rendered in the conduct of a trade or business shall be taken into account in determining the taxpayer's net profits from business.

2. Interest and dividend income derived by a taxpayer shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The taxpayer shall annex to the taxpayer's tax return a statement which demonstrates that the interest or dividends, as the case may be, were realized in the conduct of a trade or business by the taxpayer, and not from investment activities or other income-producing activities which do not constitute the conduct of a trade or business. An adequate demonstration shall have been made where it is shown that:

(1) The interest is derived from loans made in the ordinary course of a trade or business of lending money;

(2) The interest or dividends are realized with respect to short-term liquid investments of money in an amount which does not exceed the reasonably anticipated working capital needs of the taxpayer's trade or business;

(3) The interest is derived in respect of accounts receivable or installment obligations acquired in the ordinary course of a trade or business, but only where credit is ordinarily offered to customers of the business;

(4) The interest or dividends are realized with respect to investments held to meet requirements imposed by law with respect to the conduct of a trade or business (for example, minimum capital requirements imposed by regulatory agencies), or with respect to deposits made in the ordinary course of business (for example, security deposits pertaining to leases by the taxpayer of property used by the taxpayer in a trade or business, or deposits pledged by the taxpayer to secure loans incurred by the taxpayer in the conduct of a trade or business), or with respect to other interest or dividend-bearing contracts or instruments held in the ordinary course of business (for example, interest received on life insurance policies owned by a taxpayer insuring the lives of key employees of the taxpayer's trade or business);

(5) The interest or dividends are derived in the ordinary course of an activity of trading or dealing in any property which generates such income, if such activity constitutes the conduct of a trade or business; or

(6) The interest or dividends are otherwise realized directly in the conduct of a trade or business, as demonstrated to the satisfaction of the Director.

3. Where no statement is attached to the taxpayer's return, or where such statement fails to demonstrate that the interest or dividends in question have been realized in the conduct of a trade or business, such items of income shall be separately stated on the taxpayer's return and taxed either as interest described in N.J.S.A. 54A:5-1e or dividends described in N.J.S.A. 54A:5-1f, as the case may be.

4. Rental income shall not be taken into account in determining a taxpayer's net profits from business, unless the rentals are received by a taxpayer in the ordinary course of the conduct of a trade or business of dealing in or leasing property of a character in respect of which the rentals are received. A taxpayer shall not be deemed to be engaged in the conduct of a trade or business of leasing property unless substantial services are rendered in connection with the leasing activities. The activity of net leasing property shall not constitute the conduct of a trade or business, unless the taxpayer shall be in the trade or business of dealing in such property and such property shall constitute inventory or stock-in-trade of the taxpayer. Rental income of a taxpayer which is not received in the ordinary course of the conduct of a trade or business shall be taken into account in determining the taxpayer's net gains or net income from or in the form of rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

5. Royalty income and income derived from patents or copyrights of a taxpayer shall not be taken into account in determining the taxpayer's net profits from business, unless the royalties or the income derived from patents or copyrights are derived by the taxpayer in the ordinary course of a trade or business of licensing intangible property. A taxpayer shall be considered to be engaged in a trade or business of licensing intangible property only if the taxpayer created the property or performed substantial services or incurred

substantial costs with respect to the development or marketing of such property. Royalty income or income derived from patents or copyrights of a taxpayer which is not derived in the ordinary course of a trade or business of licensing intangible property shall be taken into account in determining the taxpayer's net gains or net income from or in the form of rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

6. Gains, profits and losses from the sale, exchange or disposition of property shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The gain, profit or loss is realized by the taxpayer in the ordinary course of the conduct of an activity of trading or dealing in such property and such activity constitutes the conduct of a trade or business; or

ii. The gain, profit or loss is realized by the taxpayer on the sale, exchange or other disposition of property which, in the hands of the taxpayer, constitutes property which is stock-in-trade, inventory or property held primarily for sale to customers in the ordinary course of a trade or business.

7. Gains, or profits and losses from the sale, exchange or disposition of property described in I.R.C. §1231 shall not be taken into account in determining a taxpayer's net profits from business. Gains, or profits and losses not taken into account in determining a taxpayer's net profits from business shall be taken into account in determining a taxpayer's net gains or income from the disposition of property described in N.J.S.A. 54A:5-1c.

8. A taxpayer's distributive share of partnership income or loss shall not be taken into account in determining a taxpayer's net profits from business, regardless of the character of the partnership's activities. For rules governing the taxation of income derived by a taxpayer from a partnership, see N.J.A.C. 18:35-1.14.

(c) A taxpayer's net profits from business shall be determined by taking into account all costs and expenses incurred in the conduct thereof, except no deduction shall be allowed for taxes based on income; any civil, civil administrative or criminal penalty or fine assessed and collected for a violation of a state or Federal environmental law, or any other assessment described in N.J.S.A. 54A:5-1b(2); or any treble damages paid pursuant to N.J.S.A. 58:10-23.11fa. No deduction shall be allowed for any expense or loss which is not incurred in the ordinary course of the conduct of the taxpayer's trade or business.

(d) A taxpayer's net profits from business shall be determined in accordance with the method of accounting utilized in reporting the taxpayer's business income or loss for Federal income tax purposes.

1. A taxpayer's net profits from business shall be determined by including any income which is subject to tax under the Gross Income Tax Act but which is exempt from Federal income taxation (for example, interest on non-New Jersey municipal obligations) and by excluding any income which is exempt from tax under the Gross Income Tax Act but which is subject to Federal income taxation (for example, interest or gains attributable to obligations described in N.J.S.A. 54A:6-14).

2. A taxpayer's net profits from business shall be determined by taking into account expenses or losses incurred in the conduct of the taxpayer's trade or business which are properly deductible in accordance with the taxpayer's method of accounting, even if such deductions relate to expenses incurred in earning business income exempt from taxation under the Gross Income Tax Act, or expenses which are partly or wholly nondeductible for Federal income tax purposes under rules which limit the deductibility of particular business expenses under the Internal Revenue Code. For example, meal and entertainment expenses which constitute ordinary and necessary expenses incurred in the conduct of a trade or business are fully deductible in determining a taxpayer's net profits from business for Gross Income Tax purposes.

(e) In the case of a taxpayer who is engaged in more than one trade or business, the taxpayer's net profits from business shall be determined by taking into account the income, profits, expenses and losses of all such activities on a net consolidated basis.

## OTHER AGENCIES

(a)

### NEW JERSEY TURNPIKE AUTHORITY

#### Limitations on Use of Turnpike

#### Proposed Amendment: N.J.A.C. 19:9-1.9

Authorized By: New Jersey Turnpike Authority,

Donald L. Watson, Executive Director.

Authority: N.J.S.A. 27:23-6.1.

Proposal Number: PRN 1993-71.

Submit comments by March 18, 1993 to:

Herbert I. Olarsch, Esq.  
Administrative Procedures Officer  
New Jersey Turnpike Authority  
P.O. Box 1121  
New Brunswick, NJ 08903

The agency proposal follows:

#### Summary

At the present time, the Turnpike Authority utilizes a permit procedure for the use of the road by double trailer truck combinations commonly referred to as double bottom trucks, under N.J.A.C. 19:9-1.9(a)12vi. As a result of recent State and Federal regulation (amendments to N.J.A.C. 16:32-1, and to 23 C.F.R. Part 658), any permitting procedure involving double bottom trucks on roads designated for such was eliminated. Accordingly, the Turnpike requirement for such permits is now invalid and must be removed from N.J.A.C. 19:9-1.9.

#### Social Impact

The proposed amendment will impact only the New Jersey Turnpike Authority and any truckers utilizing double bottom trucks. If approved, such truckers would no longer have to obtain a permit to operate on the New Jersey Turnpike. The impact on the Authority will be minimal, since permits for use of the road by double bottom trucks were routinely granted.

It is anticipated that the proposed deletion will be welcomed by users of the Turnpike. The deletion was made necessary by recent Federal and State regulation eliminating the use of such a permit process (amendment to N.J.A.C. 16:32-1, and 23 C.F.R. Part 658).

#### Economic Impact

The proposed amendment will have very limited economic impact. Up until the implementation of State and Federal regulations which invalidated the subparagraph to be repealed, permits were generally granted to all who applied. Operators of double trailer truck combinations will benefit in that they will no longer have to apply for a permit in order to use the roadway.

#### Regulatory Flexibility Statement

The proposed repeal will only affect those trucking firms which operate double bottom trailers on the New Jersey Turnpike. While some of these firms may be small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no requirements are imposed by the proposed amendment, which permits the Authority to eliminate the permitting process. Therefore, a regulatory flexibility analysis is not required.

**Full text of the proposal follows (deletions indicated in brackets [thus]):**

19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-11. (No change.)

12. Vehicles or combinations of vehicles, including any load thereon, exceeding the following extreme overall dimensions or weights: i.-v. (No change.)

[vi. Commercial vehicles with tandem trailer combinations, commonly known as "double bottoms," with overall individual trailer length not exceeding 28 feet 6 inches are permitted to travel on the New Jersey Turnpike provided a written permit has been secured

from the Director of Operations of the New Jersey Turnpike Authority;]

13.-25. (No change.)

(b) (No change.)

1. (No change.)

(b)

### CASINO CONTROL COMMISSION

#### Equal Employment Opportunity

#### Proposed Readoption: N.J.A.C. 19:53

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 134 and 135.

Proposal Number: PRN 1993-75.

Submit written comments by March 18, 1993 to:

Mary S. LaMantia, Assistant Counsel  
Casino Control Commission  
Tennessee and Boardwalk  
Atlantic City, New Jersey 08401

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:53 is scheduled to expire on April 28, 1993. The rules were initially promulgated in 1978 to implement provisions of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., concerning equal employment opportunity and affirmative action, N.J.S.A. 5:12-134 and 135. Section 134 of the Act requires that casino licensees and applicants agree to afford equal employment opportunity to all employees and prospective employees in accordance with an affirmative action program approved by the Commission. Section 135 of the Act grants the Commission specific powers to enforce this statutory mandate. These provisions affirm the public policy of the State of New Jersey to promote equal employment opportunity by prohibiting discrimination and by implementing affirmative action programs which are designed to achieve a balanced workforce.

The rules embody the Commission's concern with securing compliance in both the casino hotel and the casino construction industries. They address specific guarantees which applicants and licensees must make, including guarantees not to discriminate against any employees, and the requirement to take affirmative action to insure that protected class persons are recruited and employed at all levels of the workforce. The rules also set forth employment goals which may be used in determining the applicant's or licensee's good faith efforts at compliance.

Additionally, the rules establish standards designed to advance equal employment opportunity in the construction workforce. Contractors, subcontractors, applicants and licensees must report on the composition of their workforce on a regular and continuing basis.

N.J.A.C. 19:53 was readopted without change in 1983 and again in 1988 (see 15 N.J.R. 433(a), 15 N.J.R. 932(c); 20 N.J.R. 640(a); 20 N.J.R. 1214(a)). Since the 1988 readoption, the Commission has adopted new rules, at N.J.A.C. 19:53-2, to implement new provisions of the Act establishing set-aside goals for casino business with minority business enterprises ("MBE's") and women's business enterprises ("WBE's"). N.J.S.A. 5:12-184 et seq. The Act requires that each casino establish goals of expending certain percentages of their contracts for goods and services, and their bus business, with certified MBE's and WBE's. See 20 N.J.R. 2446(a), 21 N.J.R. 781(b).

1989 amendments to N.J.A.C. 19:53-1.5 revised the minority and female employment goals by county for casino licensees and applicants, and casino service industry licensees and applicants employing 50 or more persons. See 21 N.J.R. 1823(a), 21 N.J.R. 3314(c).

In 1990, N.J.A.C. 19:53-1.5 was amended to eliminate the need for prior Commission approval of employment criteria, tests or other procedures used by casino licensees for employment, advancement or promotion decisions. Under the amended rules, job relatedness must be demonstrated only upon a showing of discriminatory impact. See 22 N.J.R. 332(a), 22 N.J.R. 1272(a).

Most recently, amendments to N.J.A.C. 19:53-1.13(b) make a casino equal employment officer responsible for complying with provisions of the Casino Simulcasting Act (P.L. 1992, c.19) which require that certain qualified Atlantic City Racetrack employees who lose their jobs as a

direct result of casino simulcasting be given first preference for employment in a comparable position in a casino simulcasting facility. See 24 N.J.R. 3695(a), 25 N.J.R. 348(b).

As part of its regulatory review process, the Commission is currently reevaluating and reassessing the effectiveness of the rules in N.J.A.C. 19:53 in anticipation of the presentation of substantial amendments as a result of that review. It is presently expected that the review should be completed within the next 60 days. In light of this ongoing review, the chapter is proposed for readoption at this time without amendment.

#### **Social Impact**

Minority and female residents of this State have gained economically and socially as a result of expanded job opportunities. Minority and women's businesses have also been afforded increased economic opportunities in the casino industry. The rules set forth in N.J.A.C. 19:53 have thus promoted the general social welfare of the State and the Atlantic City area. Moreover, the rules serve the general public interest by effectively implementing Federal and State public policy concerning the promotion of equal employment opportunity and affirmative action.

The failure to readopt these rules would impede the progress which they have provided for the minority and female workforce, the industry and the region. Readoption assures continuation of increasing opportunities for minority and female workers and enterprises. Further, failure to readopt would violate the Commission's statutory mandate to promote equal employment opportunity and affirmative action within the casino industry.

#### **Economic Impact**

Casino licensees and applicants have incurred costs in complying with their obligations under N.J.A.C. 19:53. This may require, among other things, the hiring of staff to prepare reports and to monitor compliance. The regulatory agencies also expend considerable time and expense in monitoring and enforcing compliance with N.J.A.C. 19:53, including review of requested submissions and reports from the industry. However, such costs are unavoidable if the Commission is to enforce its statutory mandate to promote equal employment opportunity and affirmative action.

N.J.A.C. 19:53 has provided the minority and female workforce with increased employment opportunities, and has promoted minority and women's business enterprises. Readoption assures continuation of the benefits achieved thus far.

#### **Regulatory Flexibility Analysis**

The proposed readoption primarily affects casino licensees and applicants, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Reporting, recordkeeping and other compliance requirements may also be imposed on certain contractors, subcontractors, gaming schools and casino service industries within the scope of that Act. N.J.A.C. 19:53-1.4 sets forth mandatory construction contract language to be included in every contract or subcontract, which language specifies that the contractor or subcontractor will take affirmative action such as upgrading, transfer, advertising and training, to insure that minority applicants are recruited and employed. Such mandatory contract language also provides that the contractor or subcontractor agrees to attempt in good faith to employ minority workers in each construction trade consistent with applicable employment goals specified therein and in N.J.A.C. 19:53-1.5, such as attempts to obtain referrals of minority workers. The contract language also provides that notice of the contractor's or subcontractor's affirmative action and equal employment opportunity obligations under the Casino Control Act must be conspicuously posted, and forwarded to all labor unions with which the contractor or subcontractor has a collective bargaining agreement. N.J.A.C. 19:53-1.4 also outlines the requirements for monthly project manning reports to be submitted by contractors and subcontractors for the duration of the construction project. N.J.A.C. 19:53-1.6 requires a gaming school licensee or applicant to submit an affirmative action program regarding its enrollment.

These businesses will of course incur some administrative costs in complying with the aforementioned requirements. However, if the Commission is to fulfill its statutory mandate to promote equal employment opportunity and affirmative action, the rules in N.J.A.C. 19:53 must be consistently applied. Thus, the Commission has not provided any differing standards or exclusion from N.J.A.C. 19:53 for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:53.

# RULE ADOPTIONS

## PERSONNEL

### (a)

#### MERIT SYSTEM BOARD

#### Notice of Administrative Correction Appeals, Discipline and Separations Termination at End of Working Test Period N.J.A.C. 4A:2-4.1

Take notice that the Office of Administrative Law has discovered an error in the current text of N.J.A.C. 4A:2-4.1(c). This paragraph begins, "The notice shall be served not more than five working days . . ." By this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the erroneously printed second "more" is deleted.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

4A:2-4.1 Notice of termination

(a)-(b) (No change.)

(c) The notice shall be served not more [more] than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

## COMMUNITY AFFAIRS

### (b)

#### DIVISION OF HOUSING AND DEVELOPMENT Continuing Care Retirement Community Rules Readoption: N.J.A.C. 5:19

Proposed: April 6, 1992 at 24 N.J.R. 1146(a).

Adopted: January 13, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: January 15, 1993 as R.1993 d.79, **without change.**

Authority: N.J.S.A. 52:27D-358.

Effective Date: January 15, 1993.

Expiration Date: January 15, 1998.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:19.

## EDUCATION

### (c)

#### STATE BOARD OF EDUCATION Physical Education and Athletic Personnel and Procedures

#### Adopted Amendment: N.J.A.C. 6:29-3.4

Proposed: November 16, 1992 at 24 N.J.R. 4150(a).

Adopted: January 6, 1993 by the State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: January 19, 1993 as R.1993 d.80, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:28-7, 18A:36-19 and 18A:40-4.

Effective Date: February 16, 1993.

Expiration Date: February 8, 1995.

#### Summary of Public Comments and Agency Responses:

One person spoke regarding this rulemaking at each of the public testimony sessions held by the State Board of Education on October 21, 1992 and November 18, 1992. The speakers were Patricia Duriske, R.N., President, New Jersey State School Nurses' Association and Wayne A. Yankus, M.D., F.A.A.P., Chairman, Committee on School Health, New Jersey Chapter of the American Academy of Pediatrics. Written comments were received from seven individuals: Mary M. Avallone, R.N., M.A., Bergenfield High School Health Services; John E. Dugan, Superintendent, Greater Egg Harbor Regional High School; Patricia Duriske, R.N., President, New Jersey State School Nurses' Association; Jeanne Kiefner, R.N.; Edwina E. Lee, Assistant Executive Director/Advocacy, New Jersey School Boards Association; Janice Loschiavo, R.N., President, Bergen County School Nurses' Association and Andrew Miller, M.D., M.P.H., Medical Director, Family Health Services, New Jersey State Department of Health.

COMMENT: Six commenters opposed extending the time for completing the physical examination to 365 days prior to the first practice session of a school athletic squad or team. It was suggested this would hamper adequate follow-up and did not address the health and welfare of students.

RESPONSE: The Department disagrees. The regulations will continue to require school districts to provide physical examinations for participation in interscholastic sports. Only one physical examination was previously required during a school year, prior to participation in the first sport, with a health history update required for participation in subsequent sports. Medical authorities and the State Department of Health do not consider the change in timing of the physical examination to offer a different standard of health protection.

COMMENT: One commenter questioned whether student health records would follow a student to another school.

RESPONSE: School districts are required to forward student health records to receiving schools.

COMMENT: One commenter suggested some parents will be negligent or incompetent in completing the health history update required for participation in subsequent sports during the year.

RESPONSE: The health history update is an existing requirement which has been strengthened in the amended rule by specifying the information to be reported. The Department is not aware of any problems with the existing provisions.

COMMENT: Two commenters suggested that removing the heart assessment before and after exercise would lessen the quality of the physical examination.

RESPONSE: The Department disagrees. The assessment of the heart required before and after exercise has been removed as unnecessary based upon recommendations from the Chairman of the Committees on School Health and Sports Medicine of the New Jersey Chapter of the American Academy of Pediatrics. Assessment of cardiac abnormalities is not enhanced by minimal or short term exercise.

COMMENT: Two commenters support the proposed amendments as being adequate to identify contraindications for participation on a school athletic team. The new policy will conform with the American Academy of Pediatrics national policy and the American Medical Association's Committee on Sports Medicine policy.

RESPONSE: The Department agrees with the position taken by the commenters.

#### Summary of Agency-Initiated Changes:

A technical change has been made to correct a printing error in proposed N.J.A.C. 6:29-3.4(e) where "as minimum" was corrected to "as a minimum."

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks \*thus\*).

## 6:29-3.4 Athletics procedures

(a)-(c) (No change.)

(d) Each candidate for a place on a school athletic squad or team shall be given a medical examination by the medical inspector or designated team doctor within 365 days prior to the first practice session with examinations being made available throughout the school year consistent with the district's athletic schedule. In lieu thereof, the medical inspector may accept the report of such an examination by a physician licensed to practice medicine.

1. To participate on an athletic squad or team, each candidate whose medical examination was completed more than 60 days prior to the first practice session shall provide a health history update of medical problems experienced since the last medical examination, which shall be completed by the parent or legal guardian. The health history update shall include, but not be limited to, the following information:

- i. Hospitalizations/operations;
- ii. Illnesses;
- iii. Injuries;
- iv. Care administered by a physician; and
- v. Medications.

2. (No change in text.)

(e) A medical examination to determine the fitness of a pupil to participate in athletics shall include, as \*a\* minimum, no less than the following:

1. (No change.)

2. A physical examination which shall include, as a minimum, no less than the following:

- i.-viii. (No change.)
- ix. Assessment of the heart with attention to the presence of murmurs, noting rhythm and rate;
- x.-xv. (No change.)
- (f)-(i) (No change.)

## ENVIRONMENTAL PROTECTION AND ENERGY

### (a)

#### OFFICE OF REGULATORY POLICY

#### Notice of Administrative Corrections and Changes Statewide Stormwater Permitting Program

#### N.J.A.C. 7:14A-1.9, 2.4, 3.9, 3.13, 3 Appendices A and B, 13.5, and Appendix H

Take notice that the Department of Environmental Protection and Energy has discovered a number of minor errors and needed changes in the text of N.J.A.C. 7:14A, as adopted effective November 2, 1992 at 24 N.J.R. 4088(a) and incorporated into the New Jersey Administrative Code through the 11-16-92 Code update. Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the following errors are corrected and necessary changes made:

At N.J.A.C. 7:14A-1.9, an opening quotation mark is placed at the beginning of the definition of "municipal separate storm sewer," and the definition of "storage" is relocated to precede the "stormwater" definition, for proper alphabetical order.

At N.J.A.C. 7:14A-2.4(b), the phrase "N.J.A.C. 7:14A-3.13(a)9iii(3) or in" is deleted as unnecessary, as that subparagraph does not provide for any signature requirements beyond those set forth in N.J.A.C. 7:14A-2.4(a)2i, which is already cited in the first sentence of N.J.A.C. 7:14A-2.4(b).

In the second sentence of N.J.A.C. 7:14A-3.9(b)2i, the reference to "(b)2v below" is changed to "(b)2vi below." This correct citation is clear both from the contents of these subparagraphs and from the related Federal regulation at 40 CFR 122.28(b)(2).

At N.J.A.C. 7:14A-3.13(a)9iii, the reference to N.J.A.C. 7:14A-3.13(a)9ii ("and ii") needs to be deleted due to the deletion of that subparagraph through the adoption of amendments to this chapter published in the February 1, 1993 New Jersey Register at 25 N.J.R. 547(a). Because of this deletion of N.J.A.C. 7:14A-3.13(a)9ii, N.J.A.C.

7:14A-3.13(a)9iii is recodified as subparagraph (a)9ii. It is therefore necessary to change the reference to "(a)9iii above" in N.J.A.C. 7:14A-3.13(a)9iv to "(a)9ii above."

N.J.A.C. 7:14A-3.13(a)9iii(4) is deleted. As explained in Change upon Adoption 7 in the November 2, 1992 notice of adoption (24 N.J.R. 4088(a), 4102), language was added to N.J.A.C. 7:14A-3.13(a)9iii to clarify that a permit needs to include the requirements of N.J.A.C. 7:14A-3.13(a)9iii(1) through (4) only where the permit does not include traditional sampling and reporting requirements. However, the discharge monitoring reports discussed in N.J.A.C. 7:14A-3.13(a)9iii(4) can exist only where the permit does not include traditional sampling and reporting requirements. In light of this conflict, N.J.A.C. 7:14A-3.13(a)9iii(4) is deleted as an administrative correction.

At N.J.A.C. 7:14A-3 Appendix A, Attachment A, the phrase "and the receiving surface water(s)" ending the third paragraph is deleted, to correspond to the notice of adoption at 24 N.J.R. 4088(a), 4112.

At N.J.A.C. 7:14A-3 Appendix B, Part IB3, "stormwater discharge," is changed to "stormwater discharges" to correspond to the notice of administrative correction published December 7, 1992 at 24 N.J.R. 4364(a). In Part VY, "or Part IV" is added following the two references to "Part III," as was published in the notice of adoption at 24 N.J.R. 4088(a), 4119. In the third paragraph of Appendix B, Attachment A, the concluding phrase "and the receiving surface waters" is deleted, to correspond to the notice of adoption at 24 N.J.R. 4088(a), 4119.

N.J.A.C. 7:14A-13.5(c)4 is deleted, due to the deletion of the cited N.J.A.C. 7:14A-13.6 through the adoption published in the February 1, 1993 New Jersey Register at 25 N.J.R. 547(a). N.J.A.C. 7:14A-13.5(c)5 and 6 are recodified as N.J.A.C. 7:14A-13.5(c)4 and 5.

In the heading of the third column of the Appendix H Schedule of Monitoring, commas are added after "pH" and "Solids" as was published in both the notice of adoption (24 N.J.R. 4088(a), 4121) and the December notice of administrative correction. After the Appendix H Table, the term "non-contract" in the first paragraph is changed to "non-contact" to correspond to the published adopted text (24 N.J.R. 4088(a), 4121).

Full text of the changed and corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...  
"Municipal separate storm sewer" means a "municipal separate storm sewer" as defined at 40 CFR 122.26(b)(8).

...  
"Storage" means the holding of "waste" for a temporary period; at the end of which the waste is treated, disposed, or stored elsewhere.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

...  
["Storage" means the holding of "waste" for a temporary period, at the end of which the waste is treated, disposed, or stored elsewhere.]

...

#### 7:14A-2.4 Signatories

(a) (No change.)

(b) Except as provided in [N.J.A.C. 7:14A-3.13(a)9iii(3) or in] a general DSW permit, all reports required by permits, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above, who shall make the certifications set forth in (a)2 above, or by a duly associated representative of that person. A general DSW permit shall not specify signature requirements less stringent than those applicable under 40 CFR 122.22(b). A person is a duly authorized representative only if:

1.-5. (No change.)

(c) (No change.)

## 7:14A-3.9 General permits

(a) (No change.)

(b) Administration:

1. (No change.)

2. Authorization to discharge:

i. Except as provided in (b)2vi and 2vii below, persons seeking authorization under a general permit shall submit to the Department a written request for authorization. A person who fails to submit a request for authorization in accordance with the terms of the permit is not authorized to discharge under the terms of the general permit unless the general permit, in accordance with [(b)2v](b)2vi below, contains a provision that a request for authorization is not required, or the Department notifies a person that it is authorized by a general permit in accordance with (b)2vii below.

ii.-vii. (No change.)

3.-6. (No change.)

(c) (No change.)

## 7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-8. (No change.)

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

i.-ii. (No change.)

iii. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are not subject to an effluent limitation guideline shall be established on a case-by-case basis depending upon the nature and effect of the discharge. A permit for such a discharge must require either sampling in accordance with (a)9i [and ii] above, or:

(1) (No change.)

(2) The permittee to prepare a report summarizing the result of the inspection. This report shall be accompanied by an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit, except that if there are any incidents of non-compliance, those incidents shall be identified in the certification. If there are incidents of non-compliance, the report shall identify the steps being taken to remedy the non-compliance and to prevent such incidents from recurring. The permittee shall maintain this report and certification for a period of at least five years from the date of the report. This period may be extended by written request from the Department at any time; and

(3) Such report and certification to be signed by a person described in N.J.A.C. 7:14A-2.4(a)2i]; and

(4) Monthly submission of discharge monitoring reports to the Department, if required under N.J.A.C. 7:14A-2.5(a)12].

iv. Permits that, pursuant to [(a)9iii](a)9ii above, do not require the submittal of monitoring reports at least annually shall require that the permittee report to the Department all instances of non-compliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 at least annually.

10.-17. (No change.)

## APPENDIX A

PERMIT NUMBER NJ0088315

NJPDES/DSW GENERAL INDUSTRIAL  
STORMWATER PERMIT (ROUND 2)

## ATTACHMENT A: RFA Certification

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and

evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088315.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges[, and the receiving surface water(s)].

"I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

## APPENDIX B

PERMIT NUMBER NJ0088323  
NJPDES/DSW GENERAL PERMIT  
CONSTRUCTION ACTIVITY STORMWATER

## PART I. AUTHORIZATION UNDER THIS PERMIT

A. (No change.)

B. Eligibility

1.-2. (No change.)

3. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater [discharge,] discharges that are authorized by this permit.

C.-D. (No change.)

PARTS II.-IV. (No change.)

PART V. CONDITIONS APPLICABLE TO GENERAL  
PERMITS AUTHORIZING STORMWATER  
DISCHARGES ASSOCIATED WITH INDUSTRIAL  
ACTIVITY

A.-X. (No change.)

Y. Reopener Clause Regarding Stormwater Pollution Prevention  
Plan Certification

Notwithstanding any other condition of this permit, if the Department promulgates rules prescribing the minimum qualifications of persons qualified to review Stormwater Pollution Prevention Plans, conduct annual inspections, and/or prepare annual reports under Part III or Part IV, this permit may be modified upon the Department's initiative to require the use of such persons in the development of stormwater pollution prevention plans, the conduct of annual inspections, and/or the preparation of annual reports under Part III or Part IV. The procedures in N.J.A.C. 7:14A-7 and 14A-8 and in the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq., shall apply to such a modification.

## ATTACHMENT A: RFA Certification

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by person-

nel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088323.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges [and the receiving surface waters].

"I am aware that pursuant to the Water Pollution Control Act (see N.J.S.A. 58:10A-10f(2) and (3)), there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

7:14A-13.5 Permit-by-rule

(a)-(b) (No change.)

(c) Standards for NJPDES/SIU permit-by-rule. All indirect dischargers shall comply with the following:

- 1. Standards for prohibited discharges, see N.J.A.C. 7:14A-13.3(a)1;
- 2. Categorical pretreatment standards, see N.J.A.C. 7:14A-13.3(a)2;
- 3. DTW ordinances, rules and regulations which have been approved by the Department, see N.J.A.C. 7:14A-13.3(a)4;
- [4. Water quality violations, see N.J.A.C. 7:14A-13.6;]
- [5.]4. Sludge quality violations, see N.J.A.C. 7:14A-13.7; and
- [6.]5. Any other standards promulgated by the Department under the Pretreatment Act or State Act.

Appendix H  
Schedule of Monitoring

Wastewater Treatment Plant (or discharge) Size	Raw + Final, COD, BOD, and Suspended Solids	pH, Residual Chlorine, Settleable Solids, Temperature	Fecal Coliform Grab
<.05 MGD	1/Month, Grab	Daily, Grab	1/Month
.05-1 MGD	2/Month, 4 hr.	Daily, Grab	1/Month
.1-5 MGD	2/Month, 6 hr.	Daily, Grab	2/Month
.5-1 MGD	3/Month, 6 hr.	Daily, Grab	2/Month
1-5 MGD	1/Week, 24 hr.	2/Day, Grab	4/Month
5-10 MGD	2/Week, 24 hr.	3/Day, Grab	8/Month
10-15 MGD	3/Week, 24 hr.	3/Day, Grab	8/Month
>15 MGD	Daily, 24 hr.	6/Day, Grab	Daily

Notes: COD Testing may be deleted for POTW.

COD, BOD, TSS, pH, and/or settleable solids monitoring may be relaxed (or deleted) for [non-contract] **non-contact** cooling water discharges if the applicant's activities will not affect these constituents.

Residual chlorine monitoring will not be required at facilities which do not add chlorine to their discharge.

Fecal Coliform monitoring may be relaxed (or deleted) for facilities which do not receive domestic wastewater and which do

not receive wastewaters containing pathogenic and/or coliform organisms.

Appendix H does not apply to general DSW permits for stormwater point sources or discharges from separate storm sewers. For such discharges, the schedule of monitoring, if any, shall be stipulated in the NJPDES permit. However, Appendix H may be used as a guide in establishing the schedule of monitoring, if any, in individual DSW permits for stormwater point sources or separate storm sewers. Also, Appendix H does apply to discharges into storm sewers of domestic wastewater, non contact cooling waters, or process wastewater other than stormwater.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE**

**Marine Fisheries**

**Atlantic Sturgeon Management**

**Adopted Amendment: N.J.A.C. 7:25-18.1**

**Adopted New Rule: N.J.A.C. 7:25-18.15**

Proposed: January 21, 1992 at 24 N.J.R. 205(a).

Adopted: January 13, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 15, 1993 as R.1993 d.77 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 23:2B-6.

DEPE Docket Number: 052-91-12.

Effective Date: February 16, 1993.

Expiration Date: February 15, 1996.

The New Jersey Department of Environmental Protection and Energy (Department) is adopting the amendment of N.J.A.C. 7:25-18.1 and new rule N.J.A.C. 7:25-18.15. The amendment and new rule were proposed on January 21, 1992 at 24 N.J.R. 205(a). The comment period closed on February 20, 1992. Seven individuals submitted written comments. All commenters were commercial fishermen.

The following is a list of those persons and organizations that submitted written comments directly related to the proposal:

Individual	Organization
Robert Munson	
Marvin Rankin	
Brian Boyce	
Charles Givens	
Tim Kreigsman	K&K Fisheries, Inc.
Anthony Mahoney	Mahoney and Mahoney
Alex Ogden	Delaware Bay Waterman's Ass'n

**Summary of Public Comments and Agency Responses:**

The following is a summary of comments received on the Department's proposal and the Department's responses to the comments.

**General**

1. COMMENT: A commenter interpreted that the new rule would limit the number of Atlantic sturgeon gill net permits to a total of 10 permits.

RESPONSE: The Department disagrees with the commenter's interpretation. The new rule does not place a limit on the number of Atlantic sturgeon gill net permits that will be issued, but does include provisions that all fishermen applying for a permit must meet certain requirements. Any fisherman meeting these requirements will be eligible for a permit regardless of the number of fishermen that are eligible. Initial information provided by fishermen suggests that 25 to 40 fishermen may qualify for a permit.

2. COMMENT: Fishermen should not be eliminated from a directed Atlantic sturgeon gill net fishery just because they have no past history of participating in this fishery, and pound netters and otter trawls should be allowed to land any Atlantic sturgeon harvested.

RESPONSE: The Department disagrees with the commenter's statement. The purpose of the proposed amendment and new rule is to implement a management program for Atlantic sturgeon as recom-

mended in the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan for Atlantic Sturgeon regarding the management of Atlantic sturgeon. This plan recommends the implementation of a minimum size limit of seven feet with a monitoring program of existing fisheries, or a complete moratorium on the harvest of Atlantic sturgeon. In order to allow for a continued Atlantic sturgeon fishery and to develop biological information essential for management, the Department has proposed to stabilize fishing mortality by restricting landings to 1990 levels and to institute a research and monitoring program.

In developing the Atlantic sturgeon management program, the Department considered several ways to allocate a quota equal to 1990 landings. Because some gill net fishermen have made substantial investments in terms of time, effort, and vessel and fishing gear expenses, the Department believes it is proper to allow them the opportunity to harvest sturgeon. Therefore, the allocation of the quota was based on recent gill net catches and gill net purchases, thus, protecting those individuals that have made a substantial investment in the fishery. Prior to the development of a directed gill net fishery, most Atlantic sturgeon were taken as an occasional by-catch in the otter trawl, pound net and gill net fisheries. The Department does not believe that unrestricted catch in these fisheries is a wise management decision since the overall objective is to reduce fishing pressure on the Atlantic sturgeon resource. Unrestricted catch by these fisheries could result in the respective fishermen modifying their fishing practice to direct their effort toward Atlantic sturgeon, thus increasing pressure on the stock. At the same time, the Department recognizes the occasional incidental taking of sturgeon by these other fisheries. Since the sturgeon so taken are often dead upon retrieval of the fishing gear, the Department has permitted fishermen not eligible for an Atlantic Sturgeon Commercial Gill Net Permit to possess one Atlantic sturgeon taken while in pursuit of other species.

3. COMMENT: A 60 inch minimum size limit is too large as there is no evidence that Atlantic sturgeon stocks are declining.

RESPONSE: The Department disagrees with the commenter's statement. The ASMFC Fishery Management Plan for Atlantic Sturgeon recommends a size limit of seven feet (84 inches) based on size at sexual maturity for females. In addition, directed fisheries for Atlantic sturgeon have quickly depleted coastal stocks in other states such as Virginia, South Carolina and Florida. The Department, therefore, has proposed to increase the minimum size limit from 42 inches to 60 inches (which is less than the ASMFC recommendation) and institute a research and monitoring program to evaluate the appropriateness of the ASMFC recommended seven foot size limit.

4. COMMENT: Collection of biological data from the gill net fishery is a good idea but should be expanded to include Atlantic sturgeon taken in other fisheries.

RESPONSE: The Department agrees that collection of biological data is important but believes that collecting data from the gill net fishery only will be sufficient to evaluate the status of Atlantic sturgeon in New Jersey. Commercial landings provided by the National Marine Fisheries Service (NMFS) for 1990 indicated that the gill net fishery harvested 94 percent of the Atlantic sturgeon landed in New Jersey; therefore, the Department's gill net monitoring program will provide data from a very large segment of the fishery. In addition, the Department will have access to data collected by the NMFS describing the amount of Atlantic sturgeon taken in fisheries other than the gill net fishery. Gathering similar data from these other fisheries would not be cost-effective based on the large number of fishermen and their small Atlantic sturgeon harvest.

5. COMMENT: New Jersey's minimum size limit should correspond to Delaware's size limit so an Atlantic sturgeon harvested in Delaware Bay can be landed in either state.

RESPONSE: The Department disagrees with the commenter's statement. In developing the Atlantic sturgeon management program, the Department recommended management measures to effectively control harvest and monitor the fishery. The Department should not be expected to compromise a management program because a neighboring state may have different regulations. There are currently a wide range of species with different size limits instituted from state to state. In the case of Atlantic sturgeon, however, different state regulations are compatible in that they are designed to meet recommendations in the ASMFC Fishery Management Plan for Atlantic sturgeon. In addition, the Department feels that fishermen harvesting Atlantic sturgeon in Delaware Bay should be aware of their location and abide by regulations governed by the state where they are fishing.

6. COMMENT: The Atlantic sturgeon management proposal is a good idea and shows fairness to those who pioneered and invested in the gill net fishery.

RESPONSE: The Department agrees with the commenter's statement.

7. COMMENT: A public hearing should be held concerning the Atlantic sturgeon management proposal.

RESPONSE: The Department recognizes the importance of public hearings to access public comment and generally holds public hearings on controversial issues or when dealing with large constituent groups. A public hearing, however, is not a requirement of the Administrative Procedure Act, N.J.S.A. 52:14B-4. For the Atlantic sturgeon management proposal, public comment was solicited in the New Jersey Register at 24 N.J.R. 205(a). A copy of the proposal with an invitation to provide written comments was mailed to all licensed gill netters, fyke netters, haul seiners, otter trawlers, and commercial fishing docks. In addition, the New Jersey Marine Fisheries Council and Atlantic Sturgeon Committee, including active participants in the fishery, held numerous discussions regarding the proposal. The low number of active participants in the fishery precluded the need for a public hearing in this case.

N.J.A.C. 7:25-18.1(b)

8. COMMENT: The language "No person shall" is inaccurate.

RESPONSE: The Department inadvertently used old language which has been changed since preparing the proposal. The current language should be "A person shall not" and the adoption has been so modified.

N.J.A.C. 7:25-18.15(a)

9. COMMENT: A commenter suggested that New Jersey has no legal authority to control catches of Atlantic sturgeon in Federal waters outside of State jurisdiction.

RESPONSE: New Jersey can control what is landed in this State regardless of where the catch was made and therefore can exert control on its fishermen regardless of where they fish. The Department has proposed to implement a quota for the directed Atlantic sturgeon gill net fishery equal to 1990 documented landings. The harvest of Atlantic sturgeon to meet the quota will be based on the amount landed in New Jersey, not on the amount harvested outside of New Jersey's jurisdiction.

N.J.A.C. 7:25-18.15(b)

10. COMMENT: Atlantic sturgeon commercial gill net permits should be transferable.

RESPONSE: The Department recognizes the concerns expressed by the commenter but at this time disagrees with the suggestion that permits be transferable. One of the purposes of the Atlantic sturgeon management program is to ensure landings do not exceed those of 1990 while allowing the fishery to continue so as to minimize the adverse impacts to historical participants. Allowing transferability of permits would compromise the Department's position that individual quotas be based primarily on a fisherman's past history in the fishery. Providing for the transfer of a permit would also place a value on the permit thus creating additional incentive to fishermen to enter the fishery with the ultimate end of increasing fishing pressure on the resource. This is in direct conflict with the intent of the rule which is to reduce fishing pressure on Atlantic sturgeon stocks. This rule only represents an interim management strategy until additional biological and life history information on sturgeon is available. All indications are that future management measures will have to be more restrictive than this interim program. The Department therefore feels that the permits should be non-transferable at this time but will review this issue within the next 18 months after data on the Atlantic sturgeon resource has been collected, and a more stable management plan has been developed.

N.J.A.C. 7:25-18.15(c)

11. COMMENT: The method used to qualify for a permit is dangerous because applicants will be awarded a quota based on their previous participation in a directed fishery for a species on the verge of being declared endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

RESPONSE: The Department disagrees with the commenter's statement. The Atlantic sturgeon management program is based on the ASMFC Fishery Management Plan for Atlantic sturgeon. No known attempts are underway to manage Atlantic sturgeon under the Endangered Species Act. In addition, the concept of basing a quota on previous participation in a fishery has been used in a number of past Federal and state management programs to protect substantial investments by fishermen in terms of time, effort, and vessel and fishing gear expenses.

**N.J.A.C. 7:25-18.15(g)**

12. COMMENT: A commenter disagreed with the requirement that fishermen must have their Atlantic Sturgeon Commercial Gill Net Permit in possession at all times when engaged in the Atlantic sturgeon fishery.

RESPONSE: The Department disagrees with the commenter's statement and does not believe that this requirement will provide any hardship to fishermen. The permit will simply consist of one sheet of paper and can easily be carried or stored elsewhere on the fishing vessel. The requirement is also consistent with existing regulations concerning other types of commercial fishing licenses and permits.

**N.J.A.C. 7:25-18.15(h)**

13. COMMENT: Fishermen harvesting Atlantic sturgeon should be able to land their catch anywhere, not just in New Jersey.

RESPONSE: The Department disagrees with the commenter's statement. Under the Atlantic sturgeon management proposal, only those fishermen harvesting Atlantic sturgeon under the Atlantic Sturgeon Commercial Gill Net Permit are required to land their catch in New Jersey. The Department believes this requirement is essential to ensure accurate recordkeeping for each permittee's harvest of their annual quota of Atlantic sturgeon. All other fishermen harvesting Atlantic sturgeon as a by-catch are not required to land their catch in New Jersey.

**N.J.A.C. 7:25-18.15(i)**

14. COMMENT: All requested information pertinent to management of Atlantic sturgeon should be collected by the Department as the Department has no authority to ask fishermen to collect data. In addition, failure to comply with the data collection requirement would allow the department to seize any vessel or equipment used in the commission of the violation as prescribed in N.J.S.A. 23:2B-14.

RESPONSE: The Department disagrees with the commenter's statements. Pursuant to N.J.S.A. 23:2B-9, the Commissioner can require that anyone taking fisheries resources provide information on species, number, weight and any other information pertinent to management of the resources on forms supplied by the Department. In addition, penalties for violations as prescribed in N.J.S.A. 23:2B-14 do not include seizure of vessel or equipment but allow for a penalty of not less than \$100.00 or more than \$3,000 for the first offense and not less than \$200.00 or more than \$5,000 for any subsequent offense.

**Summary of Agency-Initiated Changes:****1. N.J.A.C. 7:25-18.1(b)-(q)**

The Department has incorporated language and subsection references into this section to reflect amendments concerning minimum size limits on weakfish adopted March 16, 1992 (see 24 N.J.R. 1113(a)), filleting of flatfish at sea adopted December 7, 1992 (see 24 N.J.R. 4368(b)), and summer flounder size and possession limits adopted January 19, 1993 (see 25 N.J.R. 303(a)). The Atlantic sturgeon proposal was published prior to the adoption of these amendments and subsequently did not contain the language incorporated by these amendments.

**2. N.J.A.C. 7:25-18.15(c)1 and 2**

The Department inadvertently used conflicting language in these paragraphs of the proposed new rule by requesting that fishermen supply information and documentation of dressed weight of Atlantic sturgeon harvested by gill net in the most recent year of participation of any of the years 1988, 1989 or 1990. Language contained in the Summary and N.J.A.C. 7:25-18.15(d)1ii(1) describe the requested information and documented proof of dressed weight of Atlantic sturgeon harvested by gill net as being from whichever year the fisherman landed the greatest dressed weight for any of the years 1988, 1989 or 1990. N.J.A.C. 7:25-18.15(c)1 and 2 have been changed to conform to language used in the Summary and N.J.A.C. 7:25-18.15(d)1ii(1).

**3. N.J.A.C. 7:25-18.15(k)**

The Department had anticipated adoption of this rule in 1992 and, therefore, structured the rule so 1992 would have been the first year for issuance of Atlantic Sturgeon Commercial Gill Net Permits. Because of unanticipated delays, adoption did not occur until 1993. Consequently, 1993 will be the first year for the issuance of Atlantic Sturgeon Commercial Gill Net Permits. Accordingly, the reference to 1992 in subsection (k) has been changed to 1993.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

**7:25-18.1 Size and possession limits**

(a) A person shall not purchase, sell, offer for sale, or expose for sale any codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel, or porgy measuring less than seven inches in length.

(b) \*[No person shall]\* **A person shall not\*** take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 14 inches in length, winter flounder under 10 inches in length, red drum under 14 inches in length, \*[or]\* Atlantic sturgeon under 60 inches in length, or weakfish under 13 inches in length except as provided in N.J.A.C. 7:25-18.14.

(c)-(q) (No change.)

**7:25-18.15 Atlantic sturgeon management**

(a) An individual shall not take or attempt to take more than one Atlantic sturgeon per day for the purposes of sale or barter from the marine waters of the State, or from the marine waters outside the State and landed within the State, without a valid Atlantic Sturgeon Commercial Gill Net Permit issued by the Commissioner.

(b) Atlantic Sturgeon Commercial Gill Net Permits are not transferable.

(c) To qualify for an Atlantic Sturgeon Commercial Gill Net Permit, an applicant shall comply with the provisions below \*[within 45 days of the effective date of this section]\* **\*by April 2, 1993\***:

1. The applicant shall complete an application provided by the Department, listing the dressed weight of Atlantic sturgeon harvested by gill net \*[in the most recent year of participation of any of the years]\* **\*during\* 1988, 1989 \*[and]\* \*or\* 1990, \*whichever year he landed the greatest dressed weight,\*** or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991 with the intent of entering a directed Atlantic sturgeon fishery.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by gill net \*[in the most recent year of participation of any of the years]\* **\*during\* 1988, 1989 \*[and]\* \*or\* 1990, \*whichever year he landed the greatest dressed weight,\*** or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991. Documented proof shall consist of one or more of the following:

- i. Weigh-out slips totaling the dressed weight harvested;
- ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser's business records);
- iii. Sales receipts for the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size;
- iv. A notarized statement from the applicant and the seller(s) attesting to the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size; or
- v. Other documentation similar to that in (c)2i, ii, iii or iv above may be accepted at the discretion of the Commissioner after his or her review; and

3. The applicant shall sign an affidavit on the application certifying as to the validity of the information provided.

(d) The application period closes \*[45 days following the effective date of this section]\* **\*April 2, 1993\***. Therefore, the Commissioner will determine an annual quota of Atlantic sturgeon (in pounds dressed) that may be harvested for each qualified applicant based upon the following:

1. The total allocation for the directed Atlantic sturgeon gill net fishery shall equal the 1990 documented dressed weight landings provided by applicants on their applications, to be divided in the following way:

- i. Applicants providing documentation of having purchased a minimum of \*[ten]\* **\*10\*** nine-inch or greater stretched mesh gill nets between January 1, 1989 and January 10, 1991 shall receive an equal share of 10 percent of the total gill net allocation, not to exceed 3,000 pounds each or;

ii. Applicants providing documentation of landings of at least 1,000 pounds dressed weight of Atlantic sturgeon during any one of the years 1988, 1989 or 1990 shall receive a minimum base of 3,000 pounds dressed weight plus a percentage of the remaining allocation determined as follows:

(1) Each applicant shall document to the Department the dressed weight of Atlantic sturgeon landed during 1988, 1989, or 1990, whichever year he landed the greatest dressed weight. The Department will divide the individual dressed weight documented by each applicant by the total amount documented by all applicants under this sub-subparagraph (d)iii(1) to obtain each applicant's percentage of the remaining allocation.

(e) All qualified applicants will receive an "Atlantic Sturgeon Commercial Gill Net Permit" \*[within 75 days following the effective date of this section]\* **\*by May 2, 1993\*** which shall indicate that permittee's annual (calendar year) quota of Atlantic sturgeon that may be commercially harvested.

(f) Following \*[75 days after the effective date of this section]\* **\*May 2, 1993\***, not more than one Atlantic sturgeon per day may be commercially harvested unless the Atlantic Sturgeon Commercial Gill Net Permit has been issued and received.

(g) All individuals shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing Atlantic sturgeon.

(h) All Atlantic sturgeon harvested under the Atlantic Sturgeon Commercial Gill Net Permit shall be landed in New Jersey. For the purposes of this section, landed shall mean the transfer of a catch of fish from a vessel to the land or any pier, wharf, or dock.

(i) All permittees shall be required to complete monthly reports supplied by the Department. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than five working days following the end of the reported month at the following address:

Division of Fish, Game and Wildlife  
Atlantic Sturgeon Program  
CN 400  
Trenton, NJ 08625

1. The monthly report shall include:

- i. The daily harvest and sale of Atlantic sturgeon (in pounds dressed);
- ii. The buyer(s) name;
- iii. The cumulative total of Atlantic sturgeon (in pounds dressed) at the beginning of the month;
- iv. The cumulative total of Atlantic sturgeon (in pounds dressed) at the end of the month;
- v. Weigh out slips or sales receipts verifying the amount (in pounds dressed) of Atlantic sturgeon sold; and
- vi. Any other requested information pertinent to management of the Atlantic sturgeon resource including catch/effort data, length and sex data, by-catch data, and tagging information from a representative size range of Atlantic sturgeon.

(j) At any time during the calendar year that the permittee's annual quota of Atlantic sturgeon has been harvested, the permittee shall cease all harvesting of Atlantic sturgeon. A monthly report marked "FINAL" shall be forwarded to the Division at the address provided at (i) above within five working days.

(k) Adjustments in individual allocation for years subsequent to **\*[1992]\* \*1993\*** may be made annually by the Commissioner, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual commercial landings data from the National Marine Fisheries Service and an individual's historical harvest performance. If no such adjustment is made, each permittee's quota shall remain at the previous year's amount.

(l) Research personnel from the Department shall be allowed to sail aboard any permitted vessel at any time.

(m) Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

1. Failure to submit the application within 45 days of the effective date of this section or to attach the required documentation to the application will result in the denial of the permit.

2. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of Atlantic sturgeon harvested or number and size of gill nets purchased shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

3. Failure to comply with the provisions of (i) and (j) above shall subject the violator to suspension or revocation of the Atlantic Sturgeon Commercial Gill Net Permit.

4. Prior to the suspension or revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### (a)

## DIVISION OF SOLID WASTE MANAGEMENT

### Solid Waste Collection Regulatory Reform

#### Adopted New Rules: N.J.A.C. 14:3-11

Proposed: April 20, 1992 at 24 N.J.R. 1459(a).

Adopted: January 14, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 20, 1993 as R.1993 d.83, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., 48:2-21, 48:13A et seq. and P.L. 1991, c.381, Sections 6, 7, 9 and 19.

DEPE Docket Number: 12-92-03.

Effective Date: February 16, 1993.

Expiration Date: May 6, 1996.

#### Summary of Public Comments and Agency Responses:

On April 20, 1992, the Department of Environmental Protection and Energy (Department) proposed a new rule to be codified at N.J.A.C. 14:3-11. In addition to publication in the New Jersey Register, notice of the proposal was published in the Newark Star Ledger, Bergen Record, Asbury Park Press, Home News, Burlington County Times, Courier Post and Trenton Times. The Department also mailed copies of the proposal to all New Jersey solid waste utilities and two major solid waste industry associations.

A public hearing was held at the Department's Public Hearing Room on May 6, 1992. The period to submit comments on the proposal ended on May 20, 1992. Five persons testified at the public hearing. In response to the proposal, the Department received oral or written comments from the following persons:

Sandra T. Ayres, Esq., Schwartz, Tobia & Stanziale for Waste Management companies

John Barton, Barton Associates

Edward M. Cornell, Jr., President of Waste Management Association, Inc.

Wayne DeFeo, New Jersey Chapter, National Solid Waste Management Association

Ron DeLucia, Inter-Boro Disposal Inc.

Vincent J. Dotoli, Esq.

Erwin G. Goovaerts, Esq., Kovach, Fitzgibbons & Goovaerts

Badrhn M. Ubushin, Deputy Public Advocate, Department of the Public Advocate, Division of Rate Counsel

Browning-Ferris Industries (BFI), Kenneth Wishnick

A summary of the comments and the Department's responses follows:

1. COMMENT: Waste Management Association, Inc. (WMA) found confusion in N.J.A.C. 14:3-11.7(c)1 which says a solid waste collector who has filed a Uniform Tariff which has not been rejected by the NJDEPE may adjust its Uniform Tariff service charge within the rate band. If a tariff was filed with staff and the collector has not heard from the Department concerning approval or rejection, can rates be increased or decreased?

## ADOPTIONS

RESPONSE: Yes, pursuant to Section 10 of the Reform Act, a solid waste collector who has submitted a Uniform Tariff to the Department which has been approved by an order in writing or is before the Department for review can utilize the rate bands. A solid waste collector who has received an order in writing rejecting the Uniform Tariff cannot utilize the rate bands.

2. COMMENT: WMA asked what action must be taken by a solid waste collector who has received an order of rejection of its Uniform Tariff.

RESPONSE: On April 27, 1992 a letter was mailed to each solid waste collector from the Director of the Division of Solid Waste Management which addresses the procedures to be taken. In summary, a solid waste collector must file a motion for reconsideration which states the alleged errors in law or fact that the solid waste collector believes the Department made in rejecting the Uniform Tariff or provide the necessary information to satisfy the Uniform Tariff deficiencies. While the motion is pending the tariff is considered rejected and it cannot be utilized by the solid waste collector.

3. COMMENT: WMA questioned whether it was logical to begin implementing the Solid Waste Collection Regulatory Reform Act (the "Reform Act") when only 24 percent of the solid waste collectors required to file Uniform Tariffs have done so.

RESPONSE: The Department disagrees that only 24 percent of the solid waste collectors required to file Uniform Tariffs had done so. Fourteen percent of the industry have failed to file Uniform Tariffs. Forty-three percent have filed Uniform Tariffs and had them approved by the Department. Approximately 54 percent of solid waste collectors are eligible to adjust their rates through application of the rate bands.

The Department believes that it is both logical and required by statute that the Reform Act be implemented whether or not all solid waste collectors have filed Uniform Tariffs. Collectors were required to file Uniform Tariffs before the Reform Act was enacted; authorizing collectors to use the rate bands only after they have complied with that requirement will help bring about compliance while fostering competition in the industry.

4. COMMENT: WMA asked what were the ramifications of initiating the first phase of the transition (rate band adjustments) when not every collector is on an even playing field (ability to use rate band).

RESPONSE: Collectors were required to submit a Uniform Tariff by March 31, 1991. The Department believes that it would be inappropriate to delay the benefits of regulatory reform solely to avoid a competitive disadvantage for those collectors who have not complied with the requirement. Failure to submit a Uniform Tariff subjects the solid waste collector to statutory fines and penalties. Each solid waste collector that has not submitted a Uniform Tariff places itself at a disadvantage.

5. COMMENT: The statement in the Summary that the rate bands allow larger percentage increases/decreases in each succeeding transition year is misleading. A statement clarifying that the rate bands are not compounded from year to year should be included.

RESPONSE: As stated in the proposed rules at N.J.A.C. 14:3-11.7(c)3, application of the rate band percentage increase/decrease is always applied to the Uniform Tariff service rates on file with the Department as of April 14, 1992. In each subsequent year during the transition period, the permitted rate band is cumulative from the prior period; it therefore allows larger percentage increases or decreases each year even though it is not compounded.

6. COMMENT: WMA inquired as to the legal enforcement actions for those collectors who have failed to file a Uniform Tariff.

RESPONSE: Collectors who have failed to file Uniform Tariffs pursuant to N.J.A.C. 14:11-7.6 have and will be issued Orders to Show Cause and may incur substantial monetary fines, criminal penalties, as well as revocation of their certificate of public convenience and necessity. Failure to submit a Uniform Tariff subjects the solid waste collector to statutory fines and penalties. Each solid waste collector that has not submitted a Uniform Tariff places itself at a disadvantage.

7. COMMENT: WMA believes that if a collector reduces rates by the first year rate band of 8.6 percent (+ 5 percent plus CPI 3.6 percent) and absorbs the "3.6 percent allowed for inflation" this would result in the collector reducing its (allowed) 12.5 percent profit rate [rate of return on rate base] by 12.2 percent, thereby losing all its profit margin.

RESPONSE: Collectors are not required to reduce service fees. It is an option, within the discretion of the solid waste collector, to increase or decrease service fees within the rate bands. Application of the rate bands provides solid waste collectors an opportunity to respond to market forces to increase or decrease their service fee without regulatory constraints. A collector's rate reduction does not necessarily cause a directly

## ENVIRONMENTAL PROTECTION

proportional reduction in its rate of return. The design of the tariff, number of affected customers and customer class, customer growth, effect of accumulated depreciation on equipment, capitalization, and operating expenses are other influencing factors that determine profit and rate of return.

8. COMMENT: WMA seeks clarifying language concerning the CPI factor being added to the reduction of prices. WMA stated that the public has been advised they have an 8.6 percent decrease or increase in their garbage bill when only the service rate is affected and that service rate is only 40 percent of the bill while disposal is 60 percent.

RESPONSE: The Department is not mandating that solid waste collectors must reduce their service fees. Solid waste collectors are free to either increase or decrease their service fee by any amount not exceeding the rate band in effect. The CPI is not being added "to the reduction in price" but is simply a component of the rate band. The rate band is the sum of the annual percentage change in the CPI plus five percent for years one and two, plus 10 percent for year three and for year four just 10 percent. The rate band is considered in total and not by its parts.

9. COMMENT: WMA comments that the statement "customers have the right at any time to choose an alternative collector and that collection services are available on a competitive basis" implies negativism or a threat.

RESPONSE: This statement is simply for the purpose of educating the public that it is not restricted to receiving service from only their current collector. The Department has no interest in disturbing the sanctity of an existing contract. There is no threat implied in this statement, nor does it present an opportunity for a customer to break a contract. It is presented as stated and required by Section 11 of the Reform Act.

10. COMMENT: NSWMA believes the Department has exceeded its statutory authority requiring that for each rate band change the affected customers be notified that "customers have the right at any time to choose an alternative collector and that collection services are available on a competitive basis". Further, NSWMA believes the notice to customers should omit the submittal of applicable rate schedule.

RESPONSE: The Department is within its statutory authority as stated in Section 10(d) and 11 of the Reform Act. The Legislature clearly intended to require this notification to educate and inform the public of its rights; that it is not restricted to receiving service from only their current collector. The public has a choice to select their collector based on competitive rates or any other criteria they select. Although Section 10d of the Reform Act does not specify this statement be included in the notification, Section 11 does not limit the Department to requiring this statement only once every year in the customer bill of rights. The Department has implicit authority to require this statement numerous times as Section 11 states "... at least once every year ..." which is not restrictive. The Customer Bill of Rights which will be set forth in future rulemaking will further detail all notification requirements. The inclusion of this statement on each notification alerts the consumer of its market options for competitively priced collectors.

11. COMMENT: NSWMA believes the statement "customers have the right at any time to choose an alternative collector and that collection services are available on a competitive basis" in the customer notification will hinder a collector's ability to effectively establish competitive rates on a customer-by-customer basis.

RESPONSE: This statement is provided as a means to educate the public and inform them that they are not restricted to receiving service from only their current collector; they have a choice based on competitive rates. Section 11 of the Reform Act is the authority for this requirement, which provides as an option to the collector the pricing flexibility it needs to maintain its competitiveness. The language is not intended to arbitrarily cause customer loss for any solid waste collector. It is the solid waste collector's decision to adjust its rates within the rate bands on a customer-by-customer basis.

12. COMMENT: WMA requests that notification of disposal facility rate adjustments to collectors should be made in writing to the collector's corporate address and sent via certified mail with return receipt requested.

RESPONSE: The Department has revised N.J.A.C. 14:3-11.8(a)1 upon adoption to require that notification be sent to the corporate address, provided the solid waste collector has made the address known to the disposal facility. The Department does not agree that the notice should be sent via certified mail. It is unnecessary and creates an undue burden on the disposal facility.

13. COMMENT: WMA feels the exigent circumstances for filing a petition for a rate increase should include negotiated union contract agreements since salary and benefit expenses are affected.

RESPONSE: Though the rule does not specifically list salary and benefit increases under a negotiated collective bargaining agreement as a "financial hardship" or "exigent circumstance," nothing in the rule would prevent a collector from petitioning for a rate increase in that circumstance. The collector can obtain the Department's approval of an increase in its Uniform Tariff service charges if it demonstrates that its charges are at the limit authorized under the applicable rate band, and that an adjustment is necessary if the collector is to have an opportunity to earn a just and reasonable rate. The collector has the burden of proof to demonstrate, in its petition for rate relief pursuant to N.J.A.C. 14:3-11.8(a), the hardship or exigent circumstances.

14. COMMENT: WMA states that the \$100.00 annual fee to defray cost of supervision of the transition period is not essential and should be withdrawn. The \$100.00 fee is just the starting fee which will lead to larger fees. Simplification of going from rate base/rate of return regulation to the Reform Act should yield savings to the state.

RESPONSE: The \$100.00 fee is statutorily established. There is no provision within the Reform Act to increase or decrease the fee. Unless subsequent legislation is adopted, the fee will remain fixed at \$100.00. The \$100.00 annual fee provides the Department with a portion of the costs associated with properly monitoring the industry and effective competition in the marketplace and further obviates the need to collect these costs through permitting fees.

15. COMMENT: The National Solid Wastes Management Association (NSWMA) believes the Department exceeded its statutory authority in its definition of the rate band adjustment report and verification form by including the language "but not limited to."

RESPONSE: The definition of the Rate Adjustment Annual Report Form and the Verification Form have been revised, upon adoption, to reflect the specific information requested and provides for the request of such other information as determined reasonably necessary to fulfill the Department's responsibility under the Reform Act. The Department is within its statutory authority pursuant to request this information as Section 17 lists specific examples, but also provides that the DEPE is not limited to the information so listed. The information will be used to assess effective competition and will also be compiled to provide a report to the legislature as required in the Reform Act. The required information on the rate band adjustment form will address the amount of increase or decrease to the service rate and the aggregate number of affected customers by class of customers.

The Verification Form will be used solely to verify that the information submitted by the solid waste collector in its revised Uniform Tariff sheets properly reflect the adjustments in the disposal facility rates the collector utilizes, and that customers will be charged those tariff disposal rates. Neither the forms nor an exhaustive list of their contents is set forth in the rule itself as they are dynamic documents which may be revised from time to time to solicit additional information consistent with the Reform Act. To subject these forms to rulemaking would become prohibitive.

16. COMMENT: NSWMA asked if the Department is seeking a Verification Form for each rate band adjustment implemented for each service rate throughout the transition year. Further, a separate Verification Form requiring collectors to provide a schedule of all their rates detailing minimum/maximum rates adjusted by the rate bands is costly, burdensome and unnecessary since this information can be derived by the Uniform Tariff on file.

RESPONSE: The proposed rule was requesting the verification for prospective rate adjustments. The Department recognizes the impracticality of such a rule. Solid waste collectors are not required to submit a Verification Form for each rate band adjustment. The Rate Adjustment Annual Report Form will provide the Department a summary of the rate adjustments made during the transition period. Accordingly, the Department has removed, upon adoption, Section c(2) of N.J.A.C. 14:3-11.7 which required this information.

17. COMMENT: NSWMA believes collectors should not be required to wait for Department staff filing of revised tariffs to pass through disposal costs. Collectors should be allowed to file tariffs and Verification Forms via certified or overnight mail or in person and that the mail receipt or hand stamped page should constitute proof and approval to charge revised disposal charges.

RESPONSE: The rule as proposed allows the method of filing as the comment suggests. The requirements for disposal cost adjustments

outlined in N.J.A.C. 14:3-11.8(a) provide that solid waste collectors may implement disposal cost adjustments upon filing revised tariff sheets and verification form, and provided it has given its customers 10 days prior written notice. If the required notice has been provided to the affected customer, no further action is required. The stamped dated copy of the filing represents proof of the filing for the solid waste collector's records.

18. COMMENT: NSWMA believes the Department exceeded its authority in preventing collectors from implementing or performing any services pursuant to contracts complying with N.J.A.C. 14:3-9.6 unless and until Department approval in writing, and in further requiring said contract to contain a provision which permits the customer receiving service to terminate such contract upon 30 days written notice. The Department can not interfere in contractual relationships.

RESPONSE: The Department is acting within its authority pursuant to Section 2 of the Reform Act to protect the public's interest and inform the public of rights it might not have knowledge of at the time of entering into a contract. The Department has historically read N.J.A.C. 14:3-9.6 to require Department approval for contracts to prevent collectors from circumventing the regulatory review of rates and charges. The approval of such contracts continues to be necessary to insure that predatory or excessive pricing, which can create an anti-competitive market which would be detrimental to regulatory reform, does not occur. The provision for 30 day termination has been revised, upon adoption, to require this clause only for residential customers, which is consistent with their right to choose an alternate collector as set forth in the Reform Act. The Department did not intend to interfere with the parties contractual rights. Municipal contracts will be addressed through the uniform bid specifications being developed by the Department. The uniform bid specification proposal is anticipated in March, 1993.

19. COMMENT: V. Dotoli, Esq. commented that N.J.A.C. 14:3-11.8(e)1ii is contradictory to N.J.A.C. 14:3-9.6 in requiring that the contract shall be at the Uniform Tariff rate and any adjustment shall be within the rate bands. N.J.A.C. 14:3-9.6 specifically pertains to contracts at rates different from those provided in the existing tariff.

RESPONSE: The proposed rules provide that all contracts, whether at tariffed rates or not, be reviewed and approved by the DEPE prior to implementation by the solid waste collector. The references to N.J.A.C. 14:3-9.6 have been deleted. The proposed rules have been revised, upon adoption, to clearly state the requirements for contracts without reference to any other regulatory citation and to eliminate the conflict. The rule proposal clearly intended to provide for review of contracts at tariffed rates and review and approval for contracts at rates other than tariffed rates. The rule has been revised to separate the different filing requires. It is within the Department's authority as provided in Section 5 (which provides the Department with the authority to review contracts for just and reasonable charges) and 19 (which establishes the criteria to evaluate effective competition) to determine whether the approval of a proposed transaction is likely to create a lack of effective competition. It is within this framework that the Department will review contracts.

20. COMMENT: BFI queried, in the case of a filing for expansion of territory and new services, is the collector prohibited from utilizing the same magnitude of rate band adjustments as the competing collector already providing service? This is a disadvantage to the new collector and a deterrent to competition.

RESPONSE: The solid waste collector implementing an initial tariff rate has the opportunity to set the initial rate at a competitive level whereas those collectors already providing the service are constrained to their tariff (with the rate band adjustments). The new collector has the advantage of entering the market at current competitive rates; to allow a new collector the same rate band adjustments would give that collector greater competitive pricing ability over those collectors already in the market.

21. COMMENT: BFI asked, what does "applicable rate schedule" mean in N.J.A.C. 14:3-11.7(c)?

RESPONSE: Applicable rate schedule refers to the schedule of the collectors' Uniform Tariff rates which apply to the customer affected by the rate band adjustment.

22. COMMENT: Sandra Ayres, Esq. commented that a petition for an initial tariff must comply with N.J.A.C. 14:1-6.15 and that written approval by the Department is required before implementation of initial rates. This is inconsistent with New Jersey law which has authorized implementation of initial tariff rates on notice; N.J.S.A. 48:2-21(b)(1) and 48:2-21.3.

RESPONSE: The rule proposal contained a requirement that petitions for initial tariffs comply with N.J.A.C. 14:1-6.15. This subsection provided

for an effective date 30 days from the date of filing. The rule proposal also included a prohibition on implementing initial tariffs without the written approval of the Department. In initial tariff filings, the Department has the authority to issue orders suspending the effective date pursuant to N.J.S.A. 48:2-21 et seq. The rules have been written to address the prior actions of the Department which effectuated this policy, by requiring all petitions be approved before implementation. In order to eliminate any confusion and in response to the comment, the proposed rules have been revised to delete all references to N.J.A.C. 14:1-6.15 and now clearly state the requirements for filing of initial tariffs without reference to any other regulatory citation. The deletion of the reference to N.J.A.C. 14:1-6.15 and the inclusion of the requirements in the rule itself eliminates any confusion or conflict between the provisions. It should be noted that pursuant to Section 2 of the Reform Act, the Department has the authority to require prior approval before implementation of initial tariff rates.

23. COMMENT: Sandra Ayres, Esq. commented that the criteria for petitioning for rate relief due to exigent circumstances should not be conditioned upon charging at the maximum rate band. Exigent circumstances can be demonstrated where a reduction in service charge, or the redesign of an entire tariff structure is needed to replace non-competitive rates and ensure continuing financial viability.

RESPONSE: Exigent circumstances does not preclude a collector from demonstrating the need to reduce its service rates to be equally competitive. The solid waste collector would have the burden to demonstrate with substantial proof that its service rates are noncompetitive, that its cost of service would justify a reduction in service charges and that such a reduction would not cause financial hardship. Charging at the limits of the rate bands is one criteria of exigent circumstances. The Reform Act established the rate bands as the mechanism for solid waste collectors to adjust their service fee pricing. If the collector has not exercised its rights to utilize the rate bands, the Department cannot evaluate whether or not the circumstances exist that preclude the collector from earning a just and reasonable return. A petition for rate relief due to exigent circumstances is not an opportunity for a collector to redesign its tariff structure or pricing format or to meet the competition for limited circumstances, since all collectors follow the Uniform Tariff format. The Department has revised N.J.A.C. 14:3-11.8(d), upon adoption, to reflect a collector's ability to petition for either increases or decreases to its Uniform Tariff service charges.

24. COMMENT: The Public Advocate, Division of Rate Counsel requests that the list of definitions be amended to include a definition stating that "Rate Counsel" means the Department of the Public Advocate, Division of Rate Counsel.

RESPONSE: The definition section of the rules shall be amended upon adoption to include the following: "Rate Counsel" means the Department of the Public Advocate, Division of Rate Counsel.

25. COMMENT: Rate Counsel believes that the inclusion of language stating that in addition to the \$100.00 fee, "the annual assessment pursuant to P.L. 1968, c.173 (C.48:2-59 et seq.) must be paid by all haulers". This language will dispel any confusion the collectors may have as to all the fees and charges to be paid annually to the DEPE.

RESPONSE: The Department has revised N.J.A.C. 14:3-11.6(a), upon adoption, to provide clarity that the \$100.00 annual fee is in addition to the annual assessment.

26. COMMENT: Rate Counsel believes that N.J.A.C. 14:3-11.6(c) should be amended to require all fees and charges including the annual assessment should be paid and up to date before any rate band adjustment, petition, report, or other paper be accepted for filing or action taken by the DEPE.

RESPONSE: Upon review of proposed N.J.A.C. 14:3-11.6(c), the Department has concluded that the failure by a solid waste collector to pay the annual assessment, although a statutory violation actionable under N.J.S.A. 48:13A-12, does not prohibit the collector from filing rate band adjustments, petitions, reports, notices or other documents, nor does such failure to pay permit the Department to refuse to take action regarding any submission by a solid waste collector. Accordingly, this provision has been deleted, upon adoption, from the proposed rules.

27. COMMENT: Rate Counsel seeks to modify N.J.A.C. 14:3-11.6 to include its "assessment for its participation in the review process set forth herein shall be determined by an appropriate formula to be determined in consultation with the DEPE."

RESPONSE: All pending petitions for rate relief before the Department will include Rate Counsel's statutory participation as set forth in N.J.S.A. 52:27E-18. Rate Counsel's assessment in rate relief petitions

will continue to be set as before the Reform Act. As for Rate Counsel's request for an assessment for participation in reviewing the documents submitted with the Verification and Rate Adjustment Annual Report forms, the Department has been advised by the Attorney General's office that there is no statutory authority for such an assessment.

28. COMMENT: Rate Counsel believes that a given service should be priced the same to all customers on that tariff. N.J.A.C. 14:3-11.7 as currently drafted will foster discriminatory pricing practices by allowing the haulers to charge different customers different rates for the same service.

RESPONSE: P.L. 1991, c.381 specifically provides at Section 9b(4) "Any adjustments to the Uniform Tariff authorized pursuant to this subsection may be made on an individual customer basis." The provision is not intended to foster discriminatory pricing practices. It would be difficult for any solid waste collector to account for multiple pricing structures within a class of customers. For example, a solid waste collector may want to provide senior citizens with a lower service charge than a family of ten. However, the Department retains authority to assure that a collector does not injure effective competition through its pricing practices. The Rate Band Annual Adjustment Form filed by each collector will serve as one means of keeping the Department apprised of changes in service rates which may represent a threat to effective competition. Further, the Department can take action to penalize the collector for charging outside the rate bands.

29. COMMENT: Rate Counsel believes that notice should given to the ratepayers a full billing cycle prior to the increase or at minimum 30 days. This would foster competition by allowing customers ample time to investigate other collectors' rates in their area before being required to pay the higher noticed rates.

RESPONSE: The Department believes that the 10 day notice period provided by statute affords sufficient notice to the public and also provides collectors affected by disposal cost increases and/or other market forces to adjust their rates without undue loss of revenues. A 30 day notice period would go beyond the intent of the law and possibly constrain a collector's ability to competitively price services by reducing the frequency of rate band adjustments.

30. COMMENT: Rate Counsel suggests that N.J.A.C. 14:3-11.8(a)2 and 11.9(b) be modified to require that the documents outlined in those sections (Verification Form and revised tariff sheets, Rate Band Adjustment Report Form) to be filed with the DEPE should also be filed concurrently with Rate Counsel. Also, the documents to be sent to Rate Counsel should include a copy of the most recent Uniform Tariff accepted by the DEPE and a schedule setting forth all calculations, compaction ratios, assumptions, etc. In addition, a copy of the customer notice should be provided to the DEPE and Rate Counsel, along with a copy of the collector's most recent filed Annual Report.

RESPONSE: All documents as provided in the proposed rules will be available for inspection at the offices of the Division of Solid Waste Management. The legislative goal of regulatory reform is to eliminate the traditional rate regulation practices of the Department and the Public Advocate. Pricing flexibility is provided to the collector to spur increased competition. To require the collector to file multiple copies of documents would subject them to costs not contemplated by the Reform Act.

31. COMMENT: Rate Counsel believes N.J.A.C. 14:3-11.10 should include the following language: "Upon an initial finding by the DEPE that a solid waste collector has recovered in excess of the authorized rate band, such collector shall be required to place the full amount of the overrecovery in an escrow account to be administered by the DEPE. This escrow account shall be retained until the DEPE, Rate Counsel and Petitioner finalize the overrecovery amount at which time refunds will be issued to customers pursuant to an order or stipulation." Rate Counsel believes that the escrow account should be a mechanism for refunding the appropriate amount to the ratepayers in a timely fashion.

RESPONSE: The Department will address each finding of an overrecovery or predatory pricing individual by Department order. The economic and financial considerations may be different and therefore require consideration on a case by case basis. Placement of overearnings into an escrow is one of many options available to the Department.

32. COMMENT: Sandra Ayres, Esq. comments that the reference to Sections 6 and 19 of the Reform Act are misleading and perhaps should be deleted until the rules to implement these sections are actually proposed.

RESPONSE: References to Section 6 and 19 of the Reform Act are not misleading as they address specific areas of the rules. Certain provisions of Section 6 are addressed by the rules at N.J.A.C. 14:3-11.10

which provides the mechanism by which a solid waste collector must issue a refund. Section 19 provides the Department the authority to review collector's actions for compliance with effective competition.

33. COMMENT: Sandra Ayres, Esq. comments that N.J.A.C. 14:3-11.4(a) is incorrect as it suggests that rate bands define the limits of all solid waste collection charges.

RESPONSE: N.J.A.C. 14:3-11.4(a) presents two separate sentences, one as to rates and one as to rate bands. The Reform Act addresses many aspects of the pricing practices of the collection industry, including service and disposal costs. This provision references the means by which solid waste collectors may impose its rates and charges. Additionally, it states that the Reform Act establishes the parameters and methods by which a solid waste collector may increase or decrease its service fee within the "rate bands."

34. COMMENT: Sandra Ayres, Esq. comments that N.J.A.C. 14:3-11.7 exceeds the scope of the Reform Act's prohibition with respect to the rate band adjustments.

RESPONSE: The Reform Act provides that only collectors with a Uniform Tariff which has not been expressly rejected by the Department may implement adjustments within the rate bands to the service fee portion of its rates. A correctly filed Uniform Tariff will meet the provisions of N.J.A.C. 14:11-7.6 through 7.9. There must first be a Uniform Tariff on file for one to be expressly rejected. Further given the ability to review the filed Uniform Tariff, the Department can, for good cause, expressly reject any sheet contained within the filing.

35. COMMENT: Sandra Ayres, Esq. comments that the Reform Act does not afford DEPE discretion to prevent the automatic pass-through of disposal cost increases. The disposal cost increase, like a disposal cost decrease, is automatic upon the filing of a revised tariff schedule with the DEPE.

RESPONSE: The Department agrees that disposal cost increases are automatic, as mandated by Section 8 of the Reform Act. Section 8 of the Reform Act also mandates the establishment of rules and regulations for such automatic adjustment, which are found at proposed N.J.A.C. 14:3-11.8(a)2. In order to better reflect the automatic nature of disposal cost increases, the rules have been revised, upon adoption, to provide that a solid waste collector shall file the required copies of the revised tariff sheets and Verification Forms within 30 days of such increase. Those solid waste collectors who have realized a net savings in disposal costs but who have not yet filed for an adjustment of their disposal costs pursuant to N.J.A.C. 14:3-11.8(c) may simultaneously file for such an adjustment at the same time as they file the required tariff sheets and Verification Forms for any disposal cost increase.

36. COMMENT: Sandra Ayres, Esq. stated that N.J.A.C. 14:3-11.7(c)5, which allows for implementation of initial tariff filings within 30 days, and (c)6, which requires written approval prior to implementation, are internally inconsistent and N.J.A.C. 14:3-11.7(c)6 should be deleted in its entirety. The rule would prohibit a new company from making rate band adjustments during its first transition year of operation. There is no authority in the Reform Act for such a ban.

RESPONSE: The Department has revised N.J.A.C. 14:3-11.7(c)5, upon adoption, to specify the filing requirements without reference to another regulatory cite. Those provisions that are inconsistent were deleted. The prior approval provision of N.J.A.C. 14:3-11.7(c)6 has been established to ensure, prior to implementation, compliance with the filing requirements and that the goals of effective competition and competitive pricing are not being impeded. Prior approval also eliminates the need for the Department to issue suspension orders, accordingly, paragraph (c)6 will not be deleted.

37. COMMENT: Sandra Ayres, Esq. suggested that to ensure adequate notice of regulatory requirements, N.J.A.C. 14:3-11.8(a)4, which states the filing requirements as to place, number and customer notification requirements, should be included at N.J.A.C. 14:3-11.8(b) Extension of Services, Expansion of Service, (c) Materials Recovery Adjustments, and (e) Contracts for Sale of Collection Services.

RESPONSE: The comment refers to the filing requirements for the number of submissions and the address of the Department, revised tariff sheets and Verification Forms. Where appropriate, if the reference was not previously provided, it has now been revised, upon adoption.

38. COMMENT: Sandra Ayres, Esq. commented that N.J.A.C. 14:3-11.8(c)2 is unduly restrictive and may prove counterproductive by acting as a barrier to the use of credits.

RESPONSE: The Reform Act provides that the solid waste collector may, but is not required to, adjust its Uniform Tariff disposal charge to reflect net savings in disposal costs due to decreased waste flows.

N.J.A.C. 14:3-11.8(b)2 conforms to the Department policy, proposed at 24 N.J.R. 3286(c), that each county, as a solid waste planning district, receive its proportionate share of either the residuals from disposal of solid waste or the cash equivalent on a proportionate basis. Thus, a solid waste collector should, if it chooses to pass on its disposal cost savings pursuant to N.J.A.C. 14:3-11.8(b)1, offer the disposal cost savings in a proportionate basis to the customers within each county.

#### Summary of Hearing Officer Recommendations and Agency Response:

Steven Gabel, the Department's Director for the Division of Solid Waste Management, served as hearing officer at the public hearing held on May 6, 1992. Mr. Gabel recommended that the Department adopt the rule with the changes described in the responses to specific comments above as set forth in the rule below. A copy of the record of the public hearing is available from Ida Engelhardt, Office of Legal Affairs, Department of Environmental Protection and Energy, CN 402, Trenton, NJ 08625-0402.

#### Summary of Agency-Initiated Changes:

In direct response to comments received, the Department has initiated changes to N.J.A.C. 14:3-11.7(4), 11.8(d)3 and 11.8(e)3 which contained references to rule citations at N.J.A.C. 14:1-6.15, 6.16 and 3-9.6 that no longer exist. The differences in the proposed requirements as detailed in these rules preserve the status quo of the Department and the former BPU, which through policy and Board Order routinely required the information set forth herein. These differences have been historic interpretation and standard requirements of the BPU of former N.J.A.C. 14:1-6.15 and 6.16. The BPU and subsequently the Department was acting through policy and Board Order in standardly applying these requirements. Setting them out in plain English does not take anything away from the collectors, but instead sets forth in words versus policy application the standard requirements. Also the change in the former rule cites during the period of proposal made it inappropriate to reference them. Further, it was believed that it was in the best interest of the industry not to impose upon them the need to research another rule citation.

The Department also changed the references to "revised Uniform Tariff" contained at N.J.A.C. 14:3-11.8(b) to "initial Uniform Tariff," as the former reference is incorrect. The use of the word revised presumed that a Tariff previously existed; when filing under the provisions of this subsection it is for a new service or an expansion of an existing service into a new territory which precludes a preexisting condition. To use the word "revised" was a misnomer and, therefore, corrected to accurately reflect the condition of a new service through the use of the word "initial."

Also at N.J.A.C. 14:3-11.8(c)1, the Department included the concept of net revenues received from end markets as a further clarification to the means by which revenue is generated through "material recovery."

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 11. SOLID WASTE COLLECTION REGULATORY REFORM

##### 14:3-11.1 Purpose

(a) The purpose of this subchapter is to:

1. Establish rules and procedures for regulatory reform and the eventual termination of traditional public utility rate regulation of the solid waste collection industry; and

2. Establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates.

##### 14:3-11.2 Authority

These rules are promulgated pursuant to the authority vested in the DEPE by N.J.S.A. 48:13A et seq., 13:1E-1 et seq., 48:2-21 and P.L. 1991, c.381, Sections 6, 7, 9 and 19 and shall be construed in conformity with, and not in derogation of, such statutes.

##### 14:3-11.3 Scope

These rules shall govern the pricing practices of the solid waste collection industry and will provide for the compilation of data to monitor the extent and effect of competition in the solid waste collection industry.

## 14:3-11.4 Rates

(a) The rates or charges that may be imposed by solid waste collectors shall be determined in accordance with the provisions of P.L. 1991, c.381. The Act provides the method of determining the rates bands which defines the parameters by which a solid waste collector may increase or decrease its rates.

(b) No petition for rate increases, except as provided by Section 12 of P.L. 1991, c.381 and N.J.A.C. 14:3-11.8(d), may be submitted after April 13, 1992.

## 14:3-11.5 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means P.L. 1991, c.381, known as the Solid Waste Collection Regulatory Reform Act.

"CPI" means the averaged Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics for the New York Urban and Philadelphia area for all urban consumers for the calendar year period just ended.

"DEPE" means the Department of Environmental Protection and Energy.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which materials is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Rate Adjustment Annual Report Form" means the form developed by the DEPE, \*[which will include, but not be limited to, requests for the following information: rate changes by customer class, and customer turnover.]\* **\*which includes requests for the following information to be completed by the solid waste collector:**

1. Rate changes by customer class;
2. Customer turnover; and

3. **Such other information as the DEPE determines is reasonably necessary to provide a report to the Legislature as required by the Act, to assess whether effective competition exists under Section 19 and 20 and to otherwise fulfill its responsibilities under the Act.\***

"Rate bands" means the minimum/maximum parameters established under N.J.A.C. 14:3-11.7(c) by which a solid waste collector may adjust the service fee of their uniform tariff during the transition period.

**\*"Rate Counsel" means the Department of the Public Advocate, Division of Rate Counsel.\***

"Septic waste" means pumping from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

"Solid waste" means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L. 1970, c.40 (N.J.S.A. 48:13A-6 and 48:13A-9).

"Solid waste disposal" means the storage, treatment, utilization, processing or final disposal of solid waste.

"Solid waste disposal services" means the services provided by persons engaging in the business of solid waste disposal.

"Solid waste facility" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Transition period" means the 48 month successive period commencing on April 14, 1992 and terminating on April 13, 1996.

"Transition year" means the successive 12-month period commencing on April 14 of that year. The first transition year commences April 14, 1992.

"Uniform tariff" means a tariff filed in the form required by N.J.A.C. 14:11-7.8, using the component rate structures and formulas provided by N.J.A.C. 14:11-7.7 and 7.8(b) through (d) and containing the certification required by N.J.A.C. 14:11-7.8(e).

"Verification Form" means the form developed by the DEPE, \*[which will include, but not be limited to, requests for the following information: service rates, disposal rates, and rate band effects on fees.]\* **\*which includes requests for the following information to be completed by the solid waste collector:**

1. Service rates;
2. Disposal rates;
3. Rate band effects on service fees; and
4. **Such other information as the DEPE determines is reasonably necessary to provide a report to the Legislature as required by the Act, to assess whether effective competition exists under Section 19 and 20 and to otherwise fulfill its responsibilities under the Act.\***

14:3-11.6 \*[Fees and charges]\* **\*Annual Fee\***

(a) Every solid waste collector shall pay an annual fee of \$100.00. The annual fee shall be paid within 30 days from the date of the invoice issued by the DEPE. The annual fee will cover part of the costs of supervising the solid waste collection industry. **\*The annual fee is in addition to the annual assessment required by N.J.S.A. 48:2-59 et seq.\***

(b) All checks for payment of the fees and charges established pursuant to (a) above shall be made payable to the order of the Treasurer, State of New Jersey.

1. Payment of such fees and charges shall be mailed to DEPE, Bureau of Revenue, 428 East State Street—4th Floor, CN 402, Trenton, New Jersey 08625-0402.

\*(c) No rate band adjustment, petition, report, notice, document, or other paper will be accepted for filing nor action taken by the DEPE, unless the annual fee set forth in (a) above shall have been paid as required by law.]\*

\*(d)]\*\*\*(c)\* Nonpayment of the annual fee set forth in (a) above shall result in suspension or revocation of the Certificate of Public Convenience and Necessity, subject to the notice and hearing requirements of N.J.S.A. 52:14B-9.

## 14:3-11.7 Rate band determination

(a) Every person engaged in the business of solid waste collection in the State of New Jersey shall have a Uniform Tariff on file with the DEPE.

(b) The transition period represents the consecutive 48 month period commencing April 14, 1992 and terminating April 13, 1996. The transition year periods are as follows:

## Transition Period

Year One	April 14, 1992 through April 13, 1993
Year Two	April 14, 1993 through April 13, 1994
Year Three	April 14, 1994 through April 13, 1995
Year Four	April 14, 1995 through April 13, 1996

(c) Rate bands shall be determined as follows:

1. A solid waste collector who has filed a Uniform Tariff, which has not been rejected by the DEPE, may adjust its uniform tariff service charge within the rate bands. Solid waste collectors not in compliance with N.J.A.C. 14:11-7.6 through 7.9 are not permitted by law to make adjustments to their rates or charges.

\*[2. During the transition period, every solid waste collector shall submit a Verification Form by April 14, which reflects the rate band adjustments for the forthcoming Transition Year.]\*

\*[3.]\*\*2.\* Except as provided in (c)\*[4]\*\*3\* below, annual rate band adjustments shall be made in accordance with the following:

i. In Year One, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI;

ii. In Year Two, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)\*[3]\*\*2\*i above.

iii. In Year Three, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)\*[3]\*\*2\*ii above.

iv. In Year Four, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)3iii above.

\*[4.]\*\*3.\* In the event a solid waste collector files an initial Uniform Tariff pursuant to Section 5 of the Act during any year of the Transition Period, such solid waste collector is entitled to the rates approved by the DEPE in accordance with its initial Uniform Tariff. No additional rate band adjustments for uniform tariff services charges shall be permitted in the transition year of filing, except as provided in N.J.A.C. 14:3-11.8. Rate band adjustments to the uniform tariff service rates or charges for the subsequent Transition Years will be as follows:

i. If an initial Uniform Tariff is filed and approved in Transition Year One, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year One.

(1) In \*Transition\* Year Two, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI.

(2) In \*Transition\* Year Three, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)\*[4]\*\*3\*i(1) above.

(3) In \*Transition\* Year Four, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)\*[4]\*\*3\*i(2) above.

ii. If an initial Uniform Tariff is filed in Transition Period Year Two, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Two.

(1) In \*Transition\* Year Three, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI.

(2) In \*Transition\* Year Four, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)\*[4]\*\*3\*ii(1) above.

iii. If an initial Uniform Tariff is filed in Transition Period Year Three, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Three.

(1) In \*Transition\* Year Four, a solid waste collector who filed such an initial Uniform Tariff in \*Transition\* Year Three, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI.

iv. If an initial Uniform Tariff is filed in Transition \*[Period]\* Year Four, there is no additional rate band adjustment for the uniform tariff service rates or charges in \*Transition\* Year Four.

\*[5.]\*\*4.\* A petition for an initial Uniform Tariff filed pursuant to (c)\*[4]\*\*3\* above shall conform to the provisions of N.J.A.C. \*[14:1-6.15.]\* \*14:1-4 and 5.1 through 5.4 and N.J.A.C. 14:3-11.8(a)5, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following:

i. Six copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenues. The revenue effect should include the proposed number of additional customers, the revenue to be generated by each customer, the proportionate increase in expenses associated with the expansion, the location in which the new business will be generated, and a list of competing collectors who service the same area;

ii. A statement of the reasons why the tariff or change proposed is necessary for the continued operation of the business;

iii. A statement of notices given to be issued, if any, together with a copy of the text of each of said notices to be approved by the DEPE;

iv. Pro forma income statements for each of the first two years of operations and balance sheets at the beginning and end of each year of said two year period; and

v. A list of available equipment to be used to service the proposed expansion which includes existing and to be purchased or leased equipment.\*

\*[6.]\*\*5.\* In no event shall initial Uniform Tariff sheet(s) filed pursuant to (c)\*[4]\*\*3\* above be deemed effective unless and until the DEPE shall have approved them in writing.

\*[7.]\*\*6.\* During the Transition Period, any adjustment within the established rate band may be applied to one or more individual customers; provided that the adjustment is within the applicable rate band pursuant to this subsection. Before a solid waste collector may implement such an adjustment, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

i. The date on which the adjustment becomes effective;

ii. The amount of the new rates and charges;

iii. A copy of the applicable rate schedule; and

iv. A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

\*[8.]\*\*7.\* Upon expiration of the Transition Period, a solid waste collector shall have the discretion to adjust their service charge to a sum which shall result in competitive pricing. \*[The]\* \*During and after the Transition Period, the\* DEPE within its authority pursuant to the Act, will supervise the solid waste collection industry to promote effective competition and prohibit anti-competitive practices of undercharging and overcharging.

14:3-11.8 Adjustments in addition to rate bands

(a) The following pertain to disposal cost adjustments:

1. Before a solid waste disposal facility may implement an initial rate or a revised rate, whether interim or final, granted by order the DEPE, such solid waste disposal facility shall give at least 14 days written notice of such initial or revised rate to all solid waste collectors authorized to use such solid waste disposal facility. \*Said notification will be sent to the corporate address, provided the solid waste collector has made the address known to the disposal facility, in writing.\*

**ADOPTIONS**

2. A solid waste collector may not implement an adjustment to the disposal fee of its Uniform Tariff until the solid waste collector has filed with the DEPE:

- i. Two copies of revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the changes in the disposal costs received at an authorized solid waste disposal facility; and
- ii. Two copies of the completed Verification Form.

3. In the event of a decrease in disposal rates or charges received at an authorized solid waste facility, a solid waste collector shall adjust its rates or charges by the full amount of such decrease and file with the DEPE within five days of such decrease, two copies of its revised tariff sheet(s) and Verification Form reflecting the decrease.

**\*4. In the event of an increase in disposal rates or charges received at an authorized solid waste facility, a solid waste collector shall adjust its rates or charges by the full amount of such increase and file with the DEPE, within 30 days of the effective date of such increase, two copies of its revised tariff sheet(s) and Verification Form reflecting the increase. A solid waste collector who has realized a net savings in disposal costs may simultaneously file the information required pursuant to (c) below and shall adjust the authorized disposal increase by the net effect.\***

**\*[4.]\*\*5.\*** Two copies of the revised tariff sheet(s) and Verification Form shall be filed, as follows, with:

**\*[Bureau of Rates and Tariffs]\*  
\*Office of Economic Regulation\*  
Division of Solid Waste Management  
840 Bear Tavern Road—CN 414  
Trenton, NJ 08625**

i. Filings shall include a self-addressed stamped envelope for the return of a stamped and dated copy of the filing.

ii. The stamped, dated copy of the filing shall constitute proof of filing.

iii. Before a solid waste collector may implement an adjustment pursuant to this subsection on (b), (d) or (e) below, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

- (1) The date on which the adjustment becomes effective;
- (2) The amount of the new rates and charges;
- (3) A copy of the applicable rate schedule; and
- (4) A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

(b) The following pertain to extension of services and expansion of service:

1. Solid waste collectors filing revised **\*[Uniform]\* \*initial\*** Tariff sheet(s) for the purpose of extending the area of solid waste collection service or providing new or additional types of solid waste collection service, not already provided for in the collector's filed Uniform Tariff, shall provide the following:

i. Two copies of the **\*[revised]\* \*initial\*** Uniform Tariff sheet(s) together with an explanation of the type of revision or change being sought; and

ii. Two copies of a statement of the proposed effective date of the **\*[revised]\* \*initial\*** Uniform Tariff, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the DEPE.

2. Proposed **\*[revised]\* \*initial\*** Uniform Tariff sheet(s) filed pursuant to (b)1 above shall conform to the provisions of **\*[N.J.A.C. 14:1-6.15]\* \*11.7(c)4 and 5 above\***.

3. In no event shall a **\*[revised]\* \*initial\*** Uniform Tariff filed pursuant to this subsection be deemed effective unless and until the DEPE shall have approved it in writing.

4. Rate band adjustments for **\*[revised]\* \*initial\*** Uniform Tariff sheet(s) filed pursuant to this subsection shall be made in accordance with N.J.A.C. 14:3-11.7(c)4.

(c) The following pertain to materials recovery adjustments:

1. A solid waste collector may implement an adjustment to its disposal charges of its Uniform Tariff resulting from any net savings in disposal costs due to decreased waste flows resulting from material recovery **\*or net revenues received from end markets from the sale**

**ENVIRONMENTAL PROTECTION**

**of recovered materials\*** provided the solid waste collector shall have filed with the DEPE:

- i. Two copies of the revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the net savings in disposal costs; and
- ii. Two copies of a completed Verification Form.

2. Any adjustment in disposal costs made pursuant to this subsection shall be made on a county by county basis in proportion to the tonnages reported by transfer stations and materials recovery facilities, for each county for which the solid waste collector has a uniform tariff.

(d) The following pertain to petitions for increases\*/decrease\* based on hardship or exigent circumstances:

1. A solid waste collector may petition the DEPE for increases **\*or decreases\*** in its Uniform Tariff service charges only in the event of financial hardship, exigent circumstances or significant increases in energy costs. **\*A petition for rate relief due to hardship, exigent circumstances or significant increases in energy costs is limited to the presentation of information which demonstrates that the circumstances warrant consideration by the DEPE, including, but not limited to, the presence of significant cross-subsidization between classes of customers or the inability to effectively compete.\***

2. The petitioner **\*also\*** has the burden of proof to demonstrate that:

i. It is charging at the **\*[maximum]\* \*limits\*** permitted by the applicable rate**\*[s]\*** band; and

ii. The **\*[increase]\* \*adjustment\*** is necessary so as to provide petitioner with an opportunity to earn a just and reasonable return.

3. A petition for changes in a uniform tariff service charge pursuant to **\*[(d)1 above]\* \*this subsection\*** shall **\*[conform to the provisions of N.J.A.C. 14:1-6.16 and shall]\*** be subject to all provisions pursuant to N.J.S.A. 48:2-21 et seq. and the regulations promulgated thereunder **\*and shall conform to the provisions of N.J.A.C. 14:1-4, 5.1 to 5.4 and (a)5 above, to the extent applicable, and shall contain the following (financial statements shall be prepared in accordance with the applicable Uniform System of Accounts):**

i. A comparative balance sheet for the most recent three year period (on a calendar basis);

ii. Comparative income statement for the most recent three year period (on a calendar basis);

iii. A balance sheet at the most recent date available;

iv. A statement of the amount of revenue (categorized by type of service rendered and the number of customers served) derived in the calendar year last preceding the institution of the proceedings from the intrastate sale of services rendered, the rates or charges for which are the subject matter of the filing;

v. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as calculation showing the indicated rate of return on the average net investment (for the period covered by the pro forma) that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;

vi. A statement and financial presentation by the utility demonstrating the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing;

vii. Each solid waste collector that makes a filing for rate increases pursuant to this subsection shall, upon approval of the DEPE, at the expense of the solid waste collector requesting an increase to its customers, fix a time and place for a public hearing including a court reporter, and serve published notice at least 20 days prior to such time on those persons affected by the proposed rate increase; and shall give such notice to the Department, Director of the Division of Rate Counsel, Department of the Public Advocate and the municipal clerk in each of the municipalities in which service is rendered and effected by said petition. Notice shall be at the cost and expense of the solid waste collector obligated to give or serve the notice; and

viii. Proof of service and/or notice required herein shall be filed with the DEPE at least five days before the date set for hearing.\*

4. \*[In the event a]\* **\*A\*** petition for change in rates or charges pursuant to this subsection \*[is granted by an order of the DEPE, such change may not be implemented until]\* **\*shall not be implemented until the DEPE, by order, grants the petition and\*** the solid waste collector has filed two copies of its revised tariff sheet(s) and Verification Form in accordance with (a)4 above.

(e) The following pertain to contracts of sale for collection services:

\*[1. In every instance where a solid waste collector enters into a contract or agreement with a customer for the provision of collection services:

i. Such solid waste collector shall comply with the provisions of N.J.A.C. 14:3-9.6; in no event shall a solid waste collector implement any rates or perform any services pursuant to such a contract unless and until the DEPE shall have approved the same in writing;

ii. Such contract shall be at the uniform tariff service charge on file for the solid waste collector and any adjustments to the contract rate shall be within the applicable rate bands pursuant to N.J.A.C. 14:3-11.7(c);

iii. If any contract includes services which would be new services or would be an expanded service area, the solid waste collector shall file revised Uniform Tariff sheet(s) pursuant to (b) above; in no event shall a solid waste collector implement any rates or perform any services under a contract requiring new or expanded services unless and until the DEPE shall have approved the revised Uniform Tariff sheet(s) filed pursuant to (b) above; and

iv. All contracts entered into pursuant to this subsection shall contain a provision which permits the party contracting to receive collection services to terminate such contract upon 30 days written notice.]\*

**\*1. In every instance where a solid waste collector enters into a contract or agreement with a customer or government entity for the provision of collection services such solid waste collector shall file with the Department, Office of Economic Regulation, Division of Solid Waste Management, two copies of the proposed contract.**

**2. If the proposed contract is for services currently contained in the solid waste collector's approved uniform tariff, then the rates and charges shall be as stated in the approved uniform tariff or with the applicable rate band for such transition year. Filing of the contract as required in (e)1 above, will include a certification by the solid waste collector which sets forth the type of service to be provided in the contract, the rates and charges for the specified service as contained in the approved uniform tariff, and the rates and charges as contained in the contract.**

**3. If the proposed contract is for services not currently provided for in the solid waste collector's approved uniform tariff, then the proposed contract shall not be effective until it is approved by order of the Department. The solid waste collector shall provide:**

i. A summary of the terms and conditions of the contract;

ii. The reasons for the contract or agreement, the change in rate (increase or decrease) and a description of the services that are unique which require a different rate structure;

iii. The financial substantiation for the proposed rates in the form prescribed by N.J.A.C. 14:3-11.7(c)4;

iv. The effect the proposed contract has on the company's income; and

v. If any contract includes services which would be new services or would be in an expanded service area, the solid waste collector shall file initial Uniform Tariff sheet(s) pursuant to N.J.A.C. 14:3-11.7(c)4 above.

**4. All contracts for residential service entered into pursuant to this subsection shall contain a provision which permits the party contracting to receive collection services to terminate such contract upon 30 days written notice.\***

#### 14:3-11.9 Notification/reporting requirements

(a) For the Transition Period Year One, the DEPE will notify each solid waste collector of the rate band for the period commencing April 14, 1992 by March 31, 1992. Thereafter, DEPE will notify each solid waste collector of the rate bands in effect for the forthcoming transition period by February 14, of the preceding transition year.

(b) Every six months commencing October 1, 1992 for Transition Years One and Two, every solid waste collector shall file with the DEPE, a Rate Adjustment Annual Report Form. The Rate Adjustment Annual Report Form shall be made available to each solid waste collector from the DEPE. For Transition Years Three and Four, the Rate Adjustment Annual Report Form shall be filed once a year. Report due dates are as follows:

Year One	October 1, 1992 April 1, 1993
Year Two	October 1, 1993 April 1, 1994
Year Three	April 1, 1995
Year Four	April 1, 1996

#### 14:3-11.10 Refunds

(a) If the DEPE orders a solid waste collector to pay a refund pursuant to Section 10(b)(2) of the Act, the solid waste collector shall pay said refund, plus simple interest at a rate equal to 400 basis points over the short-term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. 1274, in effect on the date of the order.

(b) Any solid waste collector whose rates or charges have been adjusted pursuant to Section 10(b)(2) of the Act shall file with the DEPE, revised Uniform Tariff sheet(s) and a Verification Form reflecting such adjustment, in accordance with N.J.A.C. 14:3-11.8(a)4; and

(c) Whenever a solid waste collector implements an adjustment pursuant to (a) above, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

1. The date on which the adjustment becomes effective;
2. The amount of the new rates and charges;
3. A copy of the applicable rate schedule; and
4. A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

## HEALTH

### (a)

#### DIVISION OF HEALTH CARE PLANNING, FINANCING AND INFORMATION SERVICES

#### Certificate of Need: Computerized Tomography (CAT/CT) Services

#### Adopted Repeal: N.J.A.C. 8:33G

Proposed: November 16, 1992 at 24 N.J.R. 4221(a).

Adopted: January 21, 1993 by Gerry E. Goodrich, J.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 22, 1993 as R.1993 d.87, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: February 16, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

## (a)

**DIVISION OF HEALTH CARE PLANNING, FINANCING  
AND INFORMATION SERVICES****Certificate of Need: Megavoltage Radiation Oncology  
Services****Adopted New Rules: N.J.A.C. 8:33I**

Proposed: November 16, 1992 at 24 N.J.R. 4222(a).

Adopted: January 21, 1993 by Gerry Goodrich, J.D., M.P.H.,  
Acting Commissioner, Department of Health (with approval  
of the Health Care Administration Board).

Filed: January 22, 1993 as R.1993 d.88, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and  
26:2H-8.

Effective Date: February 16, 1993.

Expiration Date: February 16, 1995.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

CHAPTER 33I  
CERTIFICATE OF NEED:  
MEGAVOLTAGE RADIATION ONCOLOGY

## SUBCHAPTER 1. GENERAL CRITERIA AND STANDARDS

## 8:33I-1.1 Scope and purpose

The purpose of the chapter is to establish criteria and standards for the review of certificate of need applications for existing or potential providers of megavoltage radiation oncology services. The chapter establishes minimum criteria for the initiation, retention, or expansion of megavoltage radiation oncology services. The chapter also seeks to promote megavoltage services that contain multiple units that are capable of providing a full range of photon and electron beam energies, as opposed to the promotion of multiple single unit programs in the State. In addition, the chapter prohibits the establishment of new megavoltage programs in the absence of demonstrated need in an effort to encourage multiple unit services Statewide and to discourage the unnecessary proliferation and duplication of services which would generate unwarranted additional costs to payers of health care.

## 8:33I-1.2 Definitions

(a) For purposes of this subchapter, the following definitions shall apply.

"Local advisory board region" means a cluster of counties in a particular area of the State. For the purpose of this chapter, the local advisory board regions in New Jersey are as follows:

1. Local Advisory Board Region I: Passaic, Morris, Sussex, and Warren Counties;

2. Local Advisory Board Region II: Bergen and Hudson Counties;

3. Local Advisory Board Region III: Essex and Union Counties;

4. Local Advisory Board Region IV: Hunterdon, Mercer, Middlesex, and Somerset Counties;

5. Local Advisory Board Region V: Burlington, Camden, Cumberland, Gloucester, and Salem Counties.

6. Local Advisory Board Region VI: Monmouth, Ocean, Atlantic and Cape May Counties.

"Megavoltage program" means an entire therapy department or facility which may house single or multiple megavoltage units.

"Megavoltage unit" means an individual piece of radiotherapy equipment generating beam energies in excess of 1,000 kilovolts.

"MeV" refers to a megavoltage unit with both photon and electron beam capability.

"MV" refers to a megavoltage unit with only photon beam capability.

(b) "Energy levels" of megavoltage units shall be defined as follows:

1. Low energy means four to six MV X-ray energy (exclusive of electron energy capability and inclusive of cobalt 60 units with source to skin distance of equal to or greater than 80 centimeters).

2. Medium/high energy means greater than six MV X-ray or MeV electron energy to 20 MV X-ray or MeV electron energy.

3. Higher energy means energies in excess of 20 MV X-ray or MeV electron.

## 8:33I-1.3 Utilization of megavoltage units and programs

(a) Single unit megavoltage programs shall be subject to the following:

1. Minimum annual utilization for megavoltage unit replacement in single unit megavoltage programs shall be 300 total patients or 6,200 patient visits. Consideration of minimum utilization standard compliance will take into account the output of Cobalt 60 devices and the age of the equipment. Compliance with these minimum standards will be based on the actual utilization of each megavoltage unit for the calendar year immediately prior to the submission of the certificate of need application to replace the equipment.

2. Failure to achieve an average minimum utilization as defined in (a)1 above, during any 36 consecutive months, may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and shall form a sufficient basis for the Commissioner to delicense the service.

i. Megavoltage units with medium/high energy capability or some combination thereof (commonly referred to as dual energy units) will be approved for single unit megavoltage programs where they have documented compliance with minimum utilization requirements as defined in (a)1 above and can justify the equipment in terms of clinical effectiveness and cost efficiency.

(b) Multiple unit megavoltage programs shall be subject to the following:

1. Applicants for a second megavoltage unit at an existing megavoltage program shall document minimum acceptable annual utilization level (on its existing unit) of 9,000 actual patient visits or 500 actual patients and project the achievement of 10,500 patient visits and 600 patients within two years of installation of the second megavoltage unit. Compliance with these minimum utilization standards will be based on the actual utilization of each megavoltage unit for the calendar year immediately prior to the submission of the certificate of need application to replace the equipment.

2. Multiple unit megavoltage programs shall have medium/high energy equipment capability (as defined at N.J.A.C. 8:33I-1.2(b)) and have on-site simulation capability.

3. Dual energy megavoltage units will be considered for second units in multiple unit megavoltage programs that meet the utilization requirements identified in (b)1 above.

4. Applicants for a third megavoltage unit at an existing multiple unit megavoltage program shall meet a minimum acceptable annual utilization level (on its existing two units) of 16,000 actual patient visits or 900 actual patients. Compliance with these minimum utilization standards will be based on the actual utilization of each megavoltage unit for the calendar year immediately prior to the submission of the certificate of need application to replace the equipment.

5. Failure to achieve projected minimum utilization as defined in (b)1 above, within three years of installation of the additional megavoltage equipment, may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and shall form a sufficient basis for the Commissioner to delicense the service.

6. Multiple unit programs failing to achieve an average annual minimum utilization level as defined at (b)1 or (b)4 above, whichever is applicable, during any period of 36 consecutive months may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and shall form a sufficient basis for the Commissioner to delicense the service.

**8:33I-1.4 Megavoltage radiation oncology resource allocation policy**

(a) The Department of Health will process certificate of need applications for new radiation oncology programs consistent with the provisions of the Certificate of Need Policy Manual (N.J.A.C. 8:33) and only from local advisory board regions where all existing licensed radiation oncology programs meet minimum annual levels of utilization as specified at N.J.A.C. 8:33I-1.3. In addition, the annual patient treatment capacity levels for existing and approved megavoltage equipment must exceed 90 percent for the calendar year prior to the Commissioner's call for certificate of need applications for new services pursuant to N.J.A.C. 8:33-4.1(a).

1. For purposes of this section, annual megavoltage equipment treatment capacity is defined as 500 patients per unit for linear accelerators and 250 patients per unit for Cobalt-60 units.

(b) No more than one new radiation oncology program shall be approved in each local advisory board region as defined at N.J.A.C. 8:33I-1.2, where all existing megavoltage radiation oncology programs are operating at minimum levels of utilization as specified of N.J.A.C. 8:33I-1.3. Additional new facilities will be considered only when both existing and approved facilities in a given local advisory board region are operating at minimum levels of utilization as specified at N.J.A.C. 8:33I-1.3.

(c) Applications for new and additional radiation oncology programs in a health service area will be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, the following factors will also be considered in the review process:

1. Demonstration of institutional and provider competence in delivering the proposed service and the availability of American College of Radiology (ACR) approved detection services (that is, mammography) and other appropriate cancer screening and detection services;

2. Capacity to perform the proposed service at the recommended minimum level within the stated period of time;

3. Commitment from the hospital's Board to establish the proposed service program;

4. Examination of the treatment capacity (as defined at (a)1 above) of existing facilities in the referral area;

5. Evidence that essential support services in the hospital (for example, counseling and social support services) are readily available and are capable of providing the necessary support services to both the patient and family members, when appropriate;

6. Evidence that the project would be financially feasible;

7. Evidence that demographic and cancer disease incidence and prevalence statistics in the local advisory board (LAB) region support service growth;

8. Evidence that the proposed service is compatible with overall health planning goals and recommendations for the State as identified in the State Health Plan and for the local advisory board area; and

9. Evidence that barriers to access to care do not exist, including access to cancer screening and detection programs, and that if no barriers exist, that access to care will remain constant or improve for individuals in the service area.

(d) Waivers from the requirements of (a) and (b) above may be considered where an applicant and the local advisory board have been able to document specific and quantifiable evidence that, in the absence of a waiver, serious problems of access to a needed service would result. Documentation should also be provided that indicates that existing area providers of this service will not be jeopardized (for example, experience a significant decline in volume) by the proposed new provider will meet all requirements contained in this subchapter.

(e) All certificate of need applications for new megavoltage radiation oncology programs shall document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. The inability to achieve minimum utilization levels during the third year of operations or thereafter will form a sufficient basis for the Commissioner to delicense the service and/or recommend reimbursement sanctions as specified at N.J.A.C. 8:33I-1.3(a)2, (b)5 and (b)6.

**8:33I-1.5 Personnel standards**

(a) Each applicant for a certificate of need for a megavoltage radiation therapy unit shall provide the Department with written documentation that the following minimal staff complement shall be available:

1. One full-time equivalent radiation therapist directing radiation therapy for each program.

i. For the purpose of this section, a qualified radiation therapist shall be considered to be one who has been:

(1) Certified or is eligible for certification by the American Board of Radiology in general radiology prior to 1976; or

(2) Certified or eligible for certification by the American Board or the American Osteopathic Board of Radiology in therapeutic radiology since 1976;

2. Adequate coverage in single unit programs by a qualified radiological physicist to insure that Cobalt-60 units and other energy units are calibrated and employed properly in keeping with the volume of patients. In multiple unit programs, one full-time equivalent qualified radiological physicist is required.

i. For the purposes of this section, qualified radiologist physicist shall mean one who:

(1) Is certified by the American Board of Radiology in either radiological physics or therapeutic radiological physics;

(2) Is eligible for such certification;

(3) Has a bachelor's degree in the physical sciences and three years full-time experience in clinical radiation therapy physics working under the direction of a physicist certified (or board eligible) by the American Board of Radiology or has a doctorate or master's degree in physical sciences and two years' such experience; or

(4) Has a doctorate or master's degree in radiological or medical physics and two years of post-graduate clinical therapeutic physics experience.

3. Two full-time equivalent radiotherapy technicians per unit (licensed by the State of New Jersey in accordance with N.J.S.A. 26:2D-24 et seq. and N.J.A.C. 7:28-19;

4. One full-time equivalent nurse is required in multiple unit programs; and

5. One full-time equivalent simulator technician is required in multiple unit programs.

**8:33I-1.6 General criteria**

(a) As part of the application for a megavoltage radiation therapy unit, each application shall meet the following minimum general criteria:

1. Provide full compliance with Nuclear Regulatory Commission (N.R.C.) radiation standards as contained in Title 10, Code of Federal Regulations (1976, section 19 and 20), and the State of New Jersey Department of Environmental Protection radiation standards as contained in N.J.A.C. 7:28-14.1. If not in full compliance, a written estimate of applicable costs necessary to achieve full compliance shall be furnished by the applicant to the Department as part of the certificate of need application;

2. Provide for a multi-disciplinary approach to the management of cancer patients by involving all cancer disciplines in a joint treatment program. Such a program should include the establishment of an American College of Surgeons-approved cancer program, a tumor registry and a follow-up program;

3. Provide full written documentation of the purchase and operational costs of the proposed megavoltage unit. The applicant shall include both direct and indirect costs, that is, personnel, maintenance agreements, supplies and overhead. The cost of the remodeling or renovating necessary to accommodate the therapy unit should be included. Projections of anticipated revenues during the first two years of operation shall be supplied with the certificate of need application;

4. Provide written documentation in the form of an institutional policy statement that the center will accept referrals from physicians not ordinarily having access to the applicant's facilities;

5. Each applicant shall provide evidence that social and psychological counseling services will be available for its therapy patients. Such counseling shall be conducted by staff or by arrangement with other community resources or facilities.

6. Each applicant shall document the availability of adequate radiation treatment planning services;

7. Each applicant shall provide written documentation that it will not, directly or indirectly, refuse referrals on the basis of the patient's race, religion, sexual orientation, age or ability to pay. The applicant shall certify in writing compliance with all Federal and State laws in this regard;

8. Each applicant shall maintain and provide basic statistical data on the operation of the unit and report the data to the New Jersey State Department of Health at least annually, and no more than quarterly on a standardized form prepared by the Department. Data shall include, but not be limited to, number of personnel, number of patients, number of patient visits, and number of patients simulated. Copies of the required reporting forms may be obtained upon written request to the New Jersey State Department of Health, Center for Health Statistics, Room 404, CN 360, Trenton, New Jersey 08625;

9. Megavoltage programs shall be limited to a single licensed facility or single site, for example, the immediate campus location of the service. Existing providers of megavoltage services who submit certificate of need applications to locate megavoltage equipment off the site of their existing service shall be required to satisfy the requirements of N.J.A.C. 8:33I-1.4, concerning new megavoltage programs.

(a)

**OFFICE OF HEALTH POLICY AND RESEARCH**

**Certificate of Need: Rehabilitation Hospitals and Comprehensive Rehabilitation Services**

**Bed Need Methodology for Adult Comprehensive Rehabilitation Services**

**Adopted Amendment: N.J.A.C. 8:33M-1.6**

Proposed: November 16, 1992 at 24 N.J.R. 4225(a).

Adopted: January 21, 1993 by Gerry E. Goodrich, J.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 22, 1993 as R.1993 d.89, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: February 16, 1993.

Expiration Date: July 17, 1994.

**Summary of Public Comments and Agency Responses:**

COMMENT: The New Jersey Hospital Association (NJHA) expresses support for the "mechanics" of the new need methodology and cautious optimism about its appropriateness when applied to Local Advisory Board regions. However, the commenter is concerned about the Department's elimination of inter-regional migration factors from the formula. NJHA believes there needs to be additional study in each LAB region to determine the effects of patient migration on the rehabilitation need methodology. Nonetheless, the Association urges the Department to invite certificate of need applications as soon as possible, so that rehabilitation hospitals can meet patients' needs expeditiously.

RESPONSE: Department of Health analyses have shown that patients' use of rehabilitation hospitals which are located outside their area of residence results in regional in- and out-migration rates that generally cancel each other out. The chief exception to this is where large numbers of Union County residents (LAB III) utilize a certain rehabilitation hospital in Middlesex County (LAB IV). A migration factor in the LAB III-LAB IV case would have the effect of increasing the substantial bed excess which is already projected for LAB III, while also increasing the bed need in LAB IV to accommodate Union County patients. While no change is recommended at this time, the Department concurs with the commenter that additional study should be done by the local advisory boards to determine whether further changes to the rehabilitation need methodology are warranted in the future.

COMMENT: Kessler Institute for Rehabilitation and Welkind Rehabilitation Hospital (an affiliate of Kessler) express support for the Department's intent to preclude unnecessary expansion of facilities.

However, the commenters recommend that N.J.A.C. 8:33M-1.6(d) be modified to prevent the expansion of a fully utilized rehabilitation hospital which is located in the same region as an underutilized facility. In such a case, a regional plan should be developed to ensure that maximum utilization of the underutilized facility is reached. Alternatively, an exception allowing the approval should be considered only after the implementation of a regional plan developed by the respective facilities with input from the Department and the Local Advisory Board.

RESPONSE: While the Department is largely in agreement with the commenters, the regional rather than Statewide nature of this particular anomaly in comprehensive rehabilitation facility utilization, needs to be examined at the regional level. A Statewide solution, as proposed by the commenters, appears excessive to the Department of Health and no change to the rule is being proposed at this time.

COMMENT: Morristown Memorial Hospital expresses support for the proposed amendments, particularly **waiver option** for high occupancy rehabilitation hospitals.

RESPONSE: The Department is grateful for the commenter's support.

Full text of the adoption follows.

**8:33M-1.6 Requirements for expansion and new construction**

(a) Certificate of need applications for new rehabilitation hospitals or for bed additions to existing rehabilitation hospitals shall be filed with the Department in accordance with the provisions of N.J.A.C. 8:33, the Certificate of Need Policy Manual, in response to a call for applications which is issued by the Commissioner.

(b) To promote the efficient provision of comprehensive rehabilitation, these services shall be provided by rehabilitation hospitals on a regional basis. The applicant shall therefore identify the proposed local advisory board region for any new or expanding rehabilitation hospital and shall provide documentation of how the facility will assure access to comprehensive rehabilitation for the population residing throughout that region.

1. For certificate of need purposes, the regional service area proposed by an applicant shall be one of the following:

- i. Local Advisory Board Region I: Passaic, Morris, Sussex, and Warren Counties;
- ii. Local Advisory Board Region II: Bergen and Hudson Counties;
- iii. Local Advisory Board Region III: Essex and Union Counties;
- iv. Local Advisory Board Region IV: Hunterdon, Mercer, Middlesex, and Somerset Counties; or
- v. Local Advisory Board Region V: Burlington, Camden, Cumberland, Gloucester, and Salem Counties.
- vi. Local Advisory Board Region VI: Atlantic, Cape May, Monmouth, and Ocean Counties.

(c) New comprehensive rehabilitation beds shall be approved only in local advisory board regions where there is a documented, projected bed need.

1. (No change.)

2. For the purpose of computing bed need, the Department shall maintain separate inventories of approved pediatric and adult comprehensive rehabilitation beds for each local advisory board region identified in (b) above, and these beds shall be subtracted from the projected number of beds needed in each respective local advisory board region. Approved comprehensive rehabilitation beds shall include those that are authorized and licensed as described in N.J.A.C. 8:33M-1.1(e) and all comprehensive rehabilitation beds that receive certificate of need approval.

3. Need projections shall be computed using the most recent available data from licensed rehabilitation hospitals, both freestanding and non-freestanding in accordance with N.J.A.C. 8:33M-1.1(b) above, and the New Jersey Department of Labor (population projections).

i. Rehabilitation hospitals, both freestanding and nonfreestanding, shall submit utilization data to the Department of Health for each calendar year on an annual basis or more frequently, if requested. Data shall include a breakdown of the number of patients and patient days for the reporting period, according to the age and county of residence of patients.

ii. In the event that a licensed rehabilitation hospital does not provide the utilization data in (c)3i above, in a timely manner as requested by the Department of Health, the Department shall ex-

clude that facility's beds from the inventory used in calculating Statewide utilization rates and bed need for the local advisory board region.

4. The need for adult comprehensive rehabilitation beds shall be calculated in the following manner:

i. STEP 1: For each county, for the age group 20 to 44, 45 to 64, 65 to 74, and 75 and over, the number of county residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey during the time period for which the most recent data are available shall be divided by the concurrent, age-specific population of the respective county;

ii. STEP 2: For the State as a whole, for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, the total number of New Jersey residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey shall be divided by the total population for the specified age groups for the concurrent year;

iii. STEP 3: A minimum acceptable rate of patients per population shall be set for each age group identified in (c)4i above. The set minimum figure shall be that rate which is 20 percent less than the Statewide average rate computed for each age group, in accordance with (c)4ii above;

iv. STEP 4: In order to project the number of patients expected to need inpatient comprehensive rehabilitation care in the target year, the rate of patients for each age group for each county, as computed in (c)4i above, shall be multiplied by the age-specific, county-specific population that is projected for the target year. However, if the age-specific, county-specific rate of comprehensive rehabilitation bed utilization computed in accordance with (c)4i above is below the applicable minimum rate computed in accordance with (c)4iii above, then this minimum acceptable rate shall be substituted for the actual age-specific, county-specific rate;

v. STEP 5: Using the most recent data available to the Department of Health, the Statewide average length of stay in licensed comprehensive rehabilitation beds for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, shall be computed by dividing the total number of New Jersey comprehensive rehabilitation patient days utilized by each age group during the reporting period in question by the total number of New Jersey rehabilitation patients for each respective age group;

vi. STEP 6: In order to project the number of patient days expected in the target year, the age-specific, county-specific projected number of patients computed in accordance with (c)4iv above shall be multiplied by the age-specific, Statewide average length of stay computed in accordance with (c)4v above;

vii. STEP 7: The projected number of patient days for all age groups, computed in accordance with (c)4vi above, shall be summed for each county. In order to allow for 85 percent occupancy of comprehensive rehabilitation beds in the target year, the projected number of patient days for each county shall then be divided by .85;

viii. STEP 8: The projected number of patient days for each county, computed in accordance with (c)4vii above, shall be divided by 365 to yield the projected number of comprehensive rehabilitation beds needed by county residents in the target year. The projected number of beds needed by each Local Advisory Board region shall then be computed by summing the number of comprehensive rehabilitation beds required for each of the counties in each respective Local Advisory Board region;

ix. STEP 9: In order to take into account those comprehensive rehabilitation beds in New Jersey rehabilitation hospitals which are utilized by non-New Jersey residents and by patients whose residency is unknown, the number of patient days utilized by non-New Jersey residents and by patients of unknown origin at all rehabilitation hospitals located in each local advisory board region during the most recent year for which data are available shall be summed. The latter number, computed for each local advisory board region, shall then be divided by (365 × .85). The resulting region-specific number of beds shall then be added to the number of beds needed in each particular local advisory board region, computed in accordance with (c)4viii above; and

x. STEP 10: To arrive at the net number of beds needed in each local advisory board region in the target year, the inventory of approved comprehensive rehabilitation beds in each local advisory board region, determined in accordance with (c)2 above, shall be subtracted from the respective region's bed need, computed in accordance with (c)4viii and ix above.

Recodify 6. as 5. (No change in text.)

(d) In local advisory board regions where there is no net projected bed need according to the methodologies described in (c) above, the Department may give consideration to approving certificate of need applications for small numbers of additional comprehensive rehabilitation beds to be located at the site of existing rehabilitation hospitals with high occupancy rates.

1. In order to receive consideration for approval in accordance with (d) above, rehabilitation hospitals shall be in compliance with all other applicable requirements of this chapter and shall submit documentation, to the satisfaction of the Department of Health, that patients' average length of stay in the licensed comprehensive rehabilitation beds does not substantially exceed the statewide average for a comparable patient population.

2. The maximum number of beds that may be added in accordance with (d) above shall be the difference between a facility's total, licensed comprehensive rehabilitation bed complement and that number which results from multiplying the facility's total, licensed comprehensive rehabilitation bed complement by the annual occupancy rate in those beds for the 12 month period prior to filing the application, and dividing this product by .85. The formula for this calculation shall be as follows:

$$\text{Maximum Comprehensive Rehab Bed Addition} = \frac{\left( \begin{array}{c} \text{Licensed} \\ \text{Comprehensive} \\ \text{Rehab Bed} \\ \text{Complement} \end{array} \right) \times \left( \begin{array}{c} \text{Annual Occupancy} \\ \text{Rate in Licensed} \\ \text{Comprehensive} \\ \text{Rehab Beds} \end{array} \right)}{.85} - \left( \begin{array}{c} \text{Licensed} \\ \text{Comprehensive} \\ \text{Rehab Bed} \\ \text{Complement} \end{array} \right)$$

3. In no case shall the bed increase approved in accordance with (d) above exceed the difference between a facility's total licensed comprehensive rehabilitation bed complement and that number which results from multiplying the facility's total, licensed comprehensive rehabilitation bed complement by an occupancy rate of 100 percent and dividing this product by .85.

(e)-(i) (No change.)

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Notice of Administrative Correction New Jersey Care—Special Medicaid Program Scope

#### N.J.A.C. 10:72-1.1

**Take notice** that the Office of Administrative Law has discovered an error in the current text of N.J.A.C. 10:72-1.1(a). The last two sentences of this subsection were deleted through the adoption of a concurrently proposed amendment effective May 24, 1991 (see 23 N.J.R. 1200(a) and 1945(a)). That deletion is effected through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

**Full text** of the corrected rule follows (deletion indicated in brackets [thus]):

#### 10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71. [The provisions of this chapter relating to pregnant women and children are effective July 1, 1987. The provisions of this chapter

## ADOPTIONS

relating to the aged, blind, and disabled are effective February 2, 1988.]

- 1.-2. (No change.)
- (b)-(c) (No change.)

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF CONSUMER AFFAIRS BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

##### Telecommunications Wiring Exemption

**Adopted Amendment: N.J.A.C. 13:31-1.11**

**Adopted New Rule: N.J.A.C. 13:31-1.17**

Proposed: February 3, 1992 at 24 N.J.R. 339(a).

Adopted: January 6, 1993 by the Board of Examiners of Electrical Contractors, John Larkin, President.

Filed: January 22, 1993 as R.1993 d.93, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:5A-6 and 45:5A-18.

Effective Date: February 16, 1993.

Expiration Date: November 20, 1996.

The Board of Examiners of Electrical Contractors afforded all interested parties an opportunity to comment on the proposed amendment and new rule, N.J.A.C. 13:31-1.11 and 1.17, relating to a limited exemption from the Board's business permit requirements for qualified businesses engaged in telecommunications wiring. The proposal was published in the New Jersey Register on February 3, 1992 at 24 N.J.R. 339(a) together with announcement of a public hearing, which was held on March 11, 1992 at the Office of Administrative Law in Trenton. The official comment period expired on March 11, 1992. Announcement of the opportunity to respond to the Board was forwarded to the Star Ledger, the Trenton Times, the Northern and Southern Chapters of the National Electrical Contractors Association and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Examiners of Electrical Contractors, Post Office Box 45006, Newark, New Jersey, 07101.

#### Summary of Hearing Officer's Recommendations and Agency Response:

Eleven persons testified at the public hearing, 10 in favor of the proposal with modifications and one opposed. Two other sources, both opposing the proposal, submitted written comments only.

The following persons testified at the public hearing:

Philip G. Johnston, President, Johnston Communications  
Perry Kothari, Member, Board of Trustees, New Jersey Payphone Association

Bert Klein, Vice President, Corporate Counsel and Secretary, and Alfred L. Trapanese, Operations Manager, Bell Atlanticom

Joseph A. Morici, Vice President, Operations, Centennial Telephone Contractors, Inc. and Tel-Design Management, Inc.

Vincent Trivelli, Communications Workers of America, AFL-CIO

Donald J. Kennedy, Business Manager, International Brotherhood of Electrical Workers, Local 269

Joseph A. Hoffman, Esq., counsel for American Telephone and Telegraph (AT&T)

Paul M. Levinson, Esq., International Brotherhood of Electrical Workers, AFL-CIO, Local 827

Thomas Rafferty, Sr., President, Royal Telephones of New Jersey, Inc.

The following persons submitted written comments only:

William M. Connolly, Director, New Jersey Department of Community Affairs, Division of Codes and Standards

Brian D. Damant, Manager of the Northern New Jersey Chapter of the National Electrical Contractors Association

## LAW AND PUBLIC SAFETY

In her Report and Recommendations dated May 15, 1992, the hearing officer, Administrative Law Judge M. Kathleen Duncan, made the following alternative recommendations:

1. The proposal should be withdrawn and a new rule exempting telecommunications wiring should be proposed, the language of which should be patterned on the statutory language of N.J.S.A. 45:5A-18, subsections (o) and (p). Consistent with the legislative scheme and to assure that the work being exempted is of a like nature to the work exempted in these sections, a maximum voltage should be indicated; or, alternatively,

2. The proposal should be adopted with the modifications suggested by Bell Atlanticom and supported by the other commenters who testified in favor of the proposal, with the following two exceptions. (1) Bell Atlanticom suggested that certain power wiring be permitted if the applicant is trained and certified by the manufacturer of the power plant equipment or the distributor of the associated telecommunications equipment. (2) Payphone Association suggested that the definition of telecommunications wiring be expanded to include low voltage wiring used to connect a computer and/or a light in a pay telephone unit to an existing electrical outlet by way of a plug-in transformer. The hearing officer concluded that presentations made during the public hearing with regard to these two suggested modifications, discussed in more detail below, did not provide her with sufficient expertise to determine whether the work required the full expertise of a licensed electrical contractor. Accordingly, she suggested that the Board address these two issues if it determined to proceed with the rule as proposed.

The Board has rejected the hearing officer's first alternative recommendation to repropose the rule in order to set a voltage limit for telecommunications wiring similar to that set for other statutorily exempt work. There was no testimony in the record from any interconnect industry commenter supporting an exemption for telecommunications wiring defined in terms of voltage. In fact, although telecommunications wiring voltage is often lower than 30 volts, testimony at the hearing established that it can be as high as 100 volts. Several commenters who opposed the exemption also suggested that, if the rule is to be adopted, a voltage limit be set. The Board does not agree, since a voltage limit of 30 volts would be unnecessarily restrictive where the occasional higher voltage combined with low amperage poses no safety hazards. The proposal therefore included all telecommunications wiring except wiring in hazardous areas and wiring connecting the telecommunications equipment to certain power equipment.

The Board agrees with the alternative recommendation of the hearing officer to adopt the proposal with some of the modifications suggested by Bell Atlanticom and supported by other commenters who testified in favor of the proposal, where the modifications involved clarifications to the definitions of the scope of the work to be exempted. For the reasons set forth in more detail below, the Board has determined that it would be inappropriate to amend N.J.A.C. 13:31-1.17(c)4iii to permit work in Division 1 and Division 2 locations, which are hazardous areas. The Board's rationale with regard to continuing its prohibition of telecommunications work in Division 1 and 2 locations, as well as the Board's decision concerning the two issues the hearing officer raised, are set forth in the following summary of the issues raised by the commenters both at the public hearing and in written submissions.

#### Summary of Public Comments and Agency Responses:

##### General Statements in Support of Proposal

COMMENT: Comments in support of the concept of an exemption include that telecommunications wiring presents no safety hazards; technicians receive specialized training and possess specialized knowledge and skills; an exemption would be consistent with the regulatory structures of various other states; at the time the licensing law was enacted there was no need to have any broader exemption for the telecommunications industry because the "interconnect" industry as we now know it was virtually nonexistent; adoption of an exemption would foster competition and growth of the interconnect business in the State with the concomitant growth of employment opportunities; International Brotherhood of Electrical Workers (IBEW), Local 269, opposition to an exemption is grounded on a desire to retain control in a tight economic market; without an exemption smaller companies who cannot afford to subcontract work out to electrical contractors would be unable to compete with larger companies; and if only electricians are permitted to do telephone wiring the consuming public will suffer when replacement parts and servicing are required.

**RESPONSE:** The Board acknowledges these comments in favor of a telecommunications wiring exemption.

#### General Statements in Opposition to Proposal

**COMMENT:** One commenter disputed the contention that telecommunications wiring does not require the full experience of an electrical contractor, stating that proper grounding is as necessary for low-voltage wiring as it is for high voltage wiring under certain circumstances such as lightning strikes and surges.

**RESPONSE:** The Board recognizes the need for some assurance that applicable National Electrical Code requirements such as grounding requirements are followed in telecommunications installations, and the rule therefore provides that applicants for exemption certify that they are familiar with these requirements. The Board does not agree that the full expertise of an electrical contractor is required for the safe installation of this limited class of wiring.

**COMMENT:** The exemption could lead to telecommunications workers installing electrical systems including both high and low voltage on the same cable and through which all electrical systems in the house will be controlled. The proposal should limit telecommunications wiring to low voltage.

**RESPONSE:** Exempt telecommunications businesses will be required to follow all applicable provisions of the NEC and will be prohibited from installing service conductors, feeders and branch circuits. They are also prohibited from wiring computer systems to power operated controlled equipment. The commenter's concerns are therefore not well-founded.

**COMMENT:** An exemption would be considered a determination that telecommunications wiring is not properly within the scope of work performed by electrical contractors, whose training includes telecommunications installation. Many electrical contractors have been doing telecommunications work for years and some depend upon it to maintain their incomes.

**RESPONSE:** The rule makes it clear that the scope of work reserved to licensed electrical contractors has always included telecommunications wiring and will continue to do so. Thus, only licensed electrical contractors and businesses holding a Board-issued limited telecommunications wiring exemption may lawfully perform telecommunications wiring in New Jersey.

**COMMENT:** The proposal will interfere with local ordinances requiring journeymen electricians to perform certain work within the municipality for fire and other hazard control.

**RESPONSE:** Pursuant to N.J.S.A. 45:5A-17, municipal ordinances requiring licenses or otherwise setting qualifications for electrical contractors working for businesses or residents in the municipality are already explicitly preempted by the Electrical Contractors Licensing Act of 1962. The municipal role in enforcing the electric or fire prevention building sub-codes is therefore limited to the inspection system set up by DCA rules. Municipalities are, however, not prevented by the licensing act or the exemption from setting out qualifications for municipal employees.

**COMMENT:** As an alternative to an exemption, one commenter suggested a grandfather clause for corporations like AT&T which currently perform telecommunications wiring.

**RESPONSE:** It is the intention of the Board that the exemption should be open to all qualified telecommunications wiring businesses on the same terms, not only those which have historically dominated the business but also others wishing to engage in the business of installing this limited class of wiring.

**COMMENT:** The issuance of an exemption should not be a one-time affair. It should have continuing education requirements attached to it and should require renewal every three years.

**RESPONSE:** The proposed new rule includes a provision for revocation of an exemption where work does not meet appropriate standards. If a need for continuing education or periodic review and renewal is demonstrated in the future, the rule may be amended accordingly.

**COMMENT:** A new section should be added specifying that telecommunications work is to be installed in accordance with NEC provisions and, if not so installed, the exemption holder is responsible to make corrections at his own expense.

**RESPONSE:** As noted, the proposed new rule includes a provision for revocation of an exemption where work does not meet appropriate standards or for other reasons consistent with the Uniform Enforcement Act. The Board does not at this time see any need to spell out in detail the responsibilities of exempt businesses.

**COMMENT:** The Department of Community Affairs (DCA) questioned the references to compliance with the Uniform Construction Code contained in the rule, since Code compliance is determined by DCA rules.

**RESPONSE:** The Board has not suggested that the exemption serves any function for direct enforcement of the Uniform Construction Code. As stated in the proposal's Summary statement, the exemption is from the business permit requirement of the Electrical Contractors Licensing Act of 1962, N.J.S.A. 45:5A-9(a). The Act requires any business entity wishing to engage in electrical contracting to obtain a business permit from the Board. The Act also provides that certain types of electrical work are exempt from the business permit requirements. It is clear that the Board has jurisdiction over telecommunications workers by virtue of the type of work they perform. The licensing act also requires that licensees are responsible for the supervision of electrical work to conform to construction code standards (N.J.S.A. 45:5A-9(a).) Thus, while DCA regulations require that the work comply with the electrical subcode in order to pass inspection, only the Board may determine who is qualified to do electrical work in the first place, and the Board may revoke a license where the work does not meet DCA standards.

#### N.J.A.C. 13:31-1.17(b)

**COMMENT:** Defining "telecommunications wiring" as wiring "inside a building" is too narrow to meet industry requirements. Standard telecommunications industry practice is to perform all of the telecommunications wiring (including cabling) on the customer side of the demarcation point or network interface, whether the wiring is physically located within or outside a building.

**RESPONSE:** It was never the Board's intention to limit standard telecommunications industry practice in this regard. The Board is aware that installation of telecommunications wiring historically has included wiring up to the point of connection with the outside feeder cable—whether that wiring was, in fact, indoors or outdoors. The Board recognizes that telecommunications wiring may include, for example, wiring from one building to another. Accordingly, the Board is amending the rule upon adoption to correct its oversight in this regard. The amendment clarifies that telecommunication wiring includes wiring from the demarcation point, whether or not it extends to more than one building.

**COMMENT:** The definition of "telecommunications wiring" should be amended to permit connection with communications networks other than FCC-recognized networks.

**RESPONSE:** As originally proposed, the definition describing telecommunications wiring as connected to an FCC approved network was not intended to exclude a system that did not require such a connection. The Board has therefore added language to this subsection which will clarify that an exempt business may perform wiring of a private telecommunications system which is not necessarily connected to a public communications network. It should be noted, however, that the installation of such a system may include other kinds of wiring which will require the services of an electrical contractor and that the limitations of N.J.A.C. 13:31-1.17 apply.

**COMMENT:** The definition of exempt telecommunications wiring should be expanded to include low voltage wiring (24 volt) used to connect a computer and/or a light in a pay telephone unit to an existing electrical outlet by way of a plug-in transformer. This wiring is similar to that for burglar alarm systems, for which the legislature has provided an exemption.

**RESPONSE:** The Board believes that unless it is simply a matter of a cord and plug connection, this type of wiring must be provided by a licensed electrical contractor for the following reasons:

1. A proper source of power within the premises must be determined and protected by a circuit protective device of proper size. If the source of power also supplies other loads, it must be verified that the additional load of the computer and lighting will not overload the circuit.

2. Connection to the source selected must be made using proper connections within adequately sized outlet boxes or a panelboard containing circuit protective devices.

3. Wiring must be installed to the pay phone. At the hearing, the commenter used a gas station as an example of where such wiring might be installed. Certain areas within a gas station are hazardous/classified areas in which telecommunications wiring may not be performed in any event unless a licensed electrical contractor is employed.

4. The pay phone enclosure must be effectively grounded.

5. If the pay phone is installed in an exterior location, ground fault protection is required.

**ADOPTIONS**

**LAW AND PUBLIC SAFETY**

COMMENT: The Board should specify a maximum voltage for exempt telecommunications wiring.

RESPONSE: As noted above, the Board has found that defining the exempt class of work in terms of voltage is not feasible.

**N.J.A.C. 13:31-1.17(c)3**

COMMENT: This paragraph, which requires applicants to certify that they are familiar with applicable National Electric Code (NEC) provisions, appears to require telecommunications workers to certify that they have the knowledge of an electrician. The paragraph should be amended to refer to Article 800, the part of the NEC that pertains to telecommunications wiring.

RESPONSE: The Board is amending this paragraph on adoption to refer specifically to Article 800. However, the requirement is not limited to knowledge of Article 800 because other code provisions may apply. The Board requires a certification that the applicant is familiar with all sections of the Code relevant to the jobs the business will be doing.

COMMENT: A written statement attesting to proficiency is insufficient. The applicant should be required to demonstrate proficiency.

RESPONSE: The Board has determined that such provisions are not warranted at this time and that administrative problems may arise in setting up an examination for exempt business personnel.

**N.J.A.C. 13:31-1.17(c)4i**

COMMENT: This subparagraph, which prohibits power wiring/branch circuit wiring, should be amended. Power wiring is not defined in the NEC. Since telecommunications wiring carries some, albeit low voltage, power, the use of the phrase "power wiring" without more is too broad and will encompass the very wiring the Board is seeking to exempt.

RESPONSE: The Board agrees that clarification is necessary and has amended this subparagraph to identify prohibited wiring by use of terms defined in the NEC. The revision clarifies that the prohibition does not extend to wiring between power supplies integral with telecommunications equipment and the telecommunication equipment.

**N.J.A.C. 13:31-1.17(c)4ii**

COMMENT: This subparagraph—which prohibits wiring from telecommunications equipment to power operated controlled equipment—should be amended to permit such wiring if the applicant is trained and certified by the manufacturer of the power plant equipment or the distributor of the associated telecommunications equipment. In many instances, wiring to the power plant is accomplished by means of pre-manufactured power cords that insert into pre-manufactured receptacles, and connection to the outlet is often accomplished by use of common permanent receptacle plugs. The exemption excludes too much and will require telecommunications companies seeking exemption to hire electricians to do work long recognized as telecommunications work.

RESPONSE: This comment was based in part on a misunderstanding of the term "power operated controlled equipment." The prohibition is not directed against PBX power plant installations, but rather against the connection of telecommunication equipment to other electrically powered equipment. In these cases, the Board has determined that this wiring should be accomplished only by a licensed electrical contractor. Depending on the application, the utilization voltage of the controlled equipment may range from 110 Vac to 4160 Vac. Although the interconnect voltage would be a lower control level voltage, the connection of the controlled equipment may be made within enclosures containing conductors energized at the operating voltage. Also, the final connection to the control circuit of the equipment to be operated must be made at a location in the circuit that will ensure that the safety devices protecting the equipment are maintained in operation. This type of work has not, in the opinion of the Board, historically been regarded as telecommunications wiring.

**N.J.A.C. 13:31-1.17(c)4iii**

COMMENT: Some commenters stated that this subparagraph, which prohibits work in Division 1 and 2 locations, should be deleted, and N.J.A.C. 13:31-1.17(c)3 should be amended to permit applicants for exemption to work in these areas provided they certify they will comply with NEC Article 500 when performing such work. Reasons given for permitting work in Division 1 and 2 locations include (1) a material percentage of industry work is currently and safely performed in such locations (automobile garages, healthcare facilities); (2) telecommunications workers are trained to comply with NEC requirements regarding wire installation in these locations and are known for herculean efforts under tough conditions in these locations; and (3) alarm installers who are exempt from electrical licensing provisions routinely perform wiring

work in Division 1 and 2 locations, and there is no reason for treating telecommunications workers less favorably.

RESPONSE: Wiring in hazardous areas must be accomplished using metal raceway and/or cables approved for the specific application. Wiring must be installed to prevent transmission of hazardous vapors/dust/gases from the classified areas to adjacent non-classified areas. Equipment enclosures must be UL listed for the specific degree of hazard and connected to the wiring in a manner that shall prevent transmission of vapors/dust/gases from the area in which the enclosure is installed to the inside of the enclosure. Although some commenters claimed that this work is routinely done by telecommunications wiring installers, other commenters acknowledged that they do not do this work and that it is typically done by a licensed electrical contractor. The Board recognizes that many of the present telecommunications wiring businesses have personnel formerly employed and trained by the regulated utilities and who are often competent to work in hazardous areas. However, many newcomers to the business will not have such training and the exemption must be limited to cover these newer businesses. In testimony at the hearing, the attorney for Bell Atlantic suggested that more frequent inspection by construction code officials might be used to ensure code compliance in hazardous areas, or that special tests might be devised so that workers doing such work could be certified by the Board, thus avoiding the need for a blanket prohibition of work in these areas except by licensees. At the same time, the Bell Atlantic engineer who testified acknowledged that the company's workers were not specifically tested for knowledge of correct procedures for installing conduit in hazardous locations. The Board is therefore rejecting the suggestion that N.J.A.C. 13:31-1.17(c)4iii be deleted. It is also rejecting the alternative suggestion that some method of testing and certifying some of the exempt interconnect businesses as competent to work in hazardous areas be devised at this time. In this regard, under the Administrative Procedure Act, businesses are free to petition the Board to reconsider this matter in a separate rulemaking proceeding.

COMMENT: The DCA commenter suggested that reference to specific sections of the NEC should not be made because section designations may change in future code updates.

RESPONSE: Code updates are adopted in New Jersey by amendments to DCA rules. If necessary, Board rules can be amended at the same time that DCA regulations are amended to incorporate code sections changes. The Board sees no reason not to use code references since they are easily understood by anyone in the wiring business.

**N.J.A.C. 13:31-1.17(i)**

COMMENT: The language in this subsection referring to a history of failure to pass local inspections or to obtain required permits suggests that the Board is ceding to municipalities the authority to require permits to perform telecommunications wiring work.

RESPONSE: Under the Uniform Construction Code Act, local construction officials already have the authority to require permits and inspect work which falls within the regulations adopted by the DCA pursuant to the Act. The Board rule simply states that where such permits and inspections are required by law and the exempt entity does not comply with such laws, the Board may revoke the exemption.

COMMENT: This subsection should be amended to include the concept of fines as well as revocation of the exemption identification card.

RESPONSE: The Board's authority to impose administrative penalties extends only to licensees. See N.J.S.A. 45:1-14 et seq.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**13:31-1.11 Fee Schedule**

(a) The following fees shall be charged by the Board:

1.-5. (No change.)

6. Telecommunications wiring exemption—application fee and issuance of identification card..... \$120.00

**13:13-1.17 Limited telecommunications wiring exemption**

(a) Pursuant to N.J.S.A. 45:5A-18, the Board may grant an exemption from the license and business permit requirements of N.J.S.A. 45:5A-9(a) to a business engaged in telecommunications wiring.

(b) For purposes of this subsection, "telecommunications wiring" means wiring \*within a premises, either\* inside \*or outside\* a building for voice and/or data transmission at voltage(s) compatible with the system being installed and connected to an FCC recognized

communication network **\*at the point of connection provided by the public utility providing communication services to the customer. It shall also include the interconnection of data wiring between computers and/or terminals\*.**

(c) An applicant for a telecommunications wiring exemption shall provide the following to the Board:

1. The full name and address of the applicant together with the nature of the business entity (for example, corporation, partnership or individual proprietorship) and the names and addresses of the owners, partners and/or officers of the entity;

2. A certification that the applicant is familiar with and is in full compliance with Part 68 of the Federal Communications Commission regulations (47 C.F.R. section 68.1 et seq.) concerning installation of telecommunications wiring and any other applicable Federal regulations;

3. A certification that the applicant is familiar with and will comply with \*[the]\* applicable National Electrical Code \*[provisions]\* **\*requirements, including, but not limited to, Article 800 (communication circuits)\*** and the regulations of the New Jersey Department of Community Affairs and that the applicant will be responsible for obtaining any required local permits and inspections for all work;

4. A certification that the applicant shall not perform the following work unless or until an electrical contractor's business permit is obtained from the Board:

i. **\*[Power wiring/branch circuit wiring;]\* **\*Wiring defined by the National Electrical Code as service conductors (the supply conductors that extend from the main or transformers to the service equipment of the premises supplied), feeder (all conductors between service equipment or the source of a separately derived system and the final branch-circuit overcurrent device), and branch circuit (the connection between the final overcurrent device protecting the circuit and the outlet/appliance). Wiring between power supplies integral with telecommunication equipment and the telecommunication equipment is not intended to be prohibited.\*****

ii. Telecommunications wiring from telecommunications equipment to power operated controlled equipment; or

iii. Installation of work in hazardous/classified areas as defined by Article 500 of the National Electrical Code. Classified areas are those in which hazardous liquids, vapors, gases, dusts and fiber are normally present (Division 1 locations) or may be present due to maintenance or equipment malfunction (Division 2 locations); and

5. A certification that the business shall not subcontract telecommunications wiring work to a person or business entity not having a business permit or a telecommunications wiring exemption issued by the Board.

(d) The application shall be accompanied by a processing fee as set forth in N.J.A.C. 13:31-1.11.

(e) The Board may require a personal interview with the applicant.

(f) If the applicant meets Board requirements for exemption set forth in this subsection, the Board shall issue a letter and an identification card designating the business as exempt.

(g) The exempt entity shall notify the Board in writing of any change of address within 10 days of the address change.

(h) The exempt entity shall notify the Board in writing of any change in name, ownership or form of ownership within 30 days of such change.

(i) After an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a telecommunications wiring exemption may be revoked on a showing that the exempt entity has engaged in the unlicensed practice of electrical contracting involving non-exempt electrical work; or that the exempt entity has a history of failure to pass local inspections or to obtain required permits; or for any reason which may serve as a basis to suspend, revoke or deny a license to engage in electrical contracting as more particularly set forth in N.J.S.A. 45:1-21 et seq.

(j) Nothing in this section shall preclude a licensed electrical contractor from performing telecommunications wiring.

(a)

## DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

### Fee Schedule

#### Bio-analytical Laboratory Directorship Licensure

#### Adopted Amendment: N.J.A.C. 13:35-6.13

Proposed: November 2, 1992 at 24 N.J.R. 4011(a).

Adopted: January 13, 1993 by the Board of Medical Examiners, Sanford Lewis, M.D., President.

Filed: January 22, 1993 as R.1993 d.91, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2 and 45:1-3.2.

Effective Date: February 16, 1993.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:35-6.13 relating to bio-analytical laboratory directorship licensure fees. The official comment period ended on December 2, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 2, 1992, at 24 N.J.R. 4011(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Medical Society of New Jersey, the Department of Health, the New Jersey Hospital Association and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608.

#### Summary of Public Comments and Agency Responses:

One letter was received during the 30-day comment period. Evan M. Cadoff, M.D., Assistant Professor of Clinical Pathology at the University of Medicine and Dentistry of New Jersey, pointed out that although the proposal purports to limit the economic impact of the examination fee increase to applicants who sit for the exam, the proposal increases the exemption fee as well. Dr. Cadoff stated that the proposal should be amended to exclude an increase in the exemption fee, since those exempted from the examination should not pay for someone else's exam.

The Board appreciates Dr. Cadoff's observation of its oversight in this regard and notes that the proposed exemption fee increase was inadvertent. As stated in the Social Impact Statement, the increase is intended to apply only to "those applicants who, as a part of the licensure process, must sit for the written examination." The Board's intent in proposing the amendment to recoup examination costs is also clearly reflected in the minutes of the Board's June 10, 1992 meeting. Accordingly, the Board is amending N.J.A.C. 13:35-6.13 upon adoption to reflect that there will be no increase in the exemption fee, which will remain at \$150.00.

**Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):**

#### 13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

- |  |                                   |
|--|-----------------------------------|
| 1.-2. (No change.)   |                                   |
| 3. Bio-analytical laboratory directorship, plenary license   |                                   |
| i. Examination (plenary license)                             | 350.00                            |
| ii. Re-examination   | 350.00                            |
| iii. Exemption (plenary license)                             | <b>*[350.00]* <b>*150.00*</b></b> |
| 4. Bio-analytical laboratory directorship, specialty license |                                   |
| i. Examination (specialty license)                           | 350.00                            |
| ii. Re-examination (specialty license)                       | 350.00                            |
| iii. Exemption (specialty license)                           | <b>*[350.00]* <b>*150.00*</b></b> |
| iv. (No change.)   |                                   |
| 5.-10. (No change.)  |                                   |

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS  
Physician Assistant License Fees**

**Adopted Amendment: N.J.A.C. 13:35-6.13**

Proposed: December 7, 1992 at 24 N.J.R. 4334(a).

Adopted: January 13, 1993 by the Board of Medical Examiners,  
Sanford Lewis, M.D., President.

Filed: January 22, 1993 as R.1993 d.92, **without change**.

Authority: P.L. 1992, c.102, section 14 (N.J.S.A. 45:9-27.28).

Effective Date: February 16, 1993.

Expiration Date: September 21, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments were received.**

Full text of the adoption follows.

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

- 1.-9. (No change.)
- 10. Physician Assistant (license)
  - i. Application fee ..... \$125.00
  - ii. Initial license fee
    - (1) If paid during the first year of a biennial renewal period ..... 190.00
    - (2) If paid during the second year of a biennial renewal period ..... 95.00
  - iii. License renewal fee, biennial ..... 190.00
  - iv. Late renewal fee ..... 100.00
  - v. Reinstatement fee ..... 175.00
  - vi. Duplicate license fee ..... 40.00
  - vii. Duplicate wall certificate ..... 50.00
- 11. (No change in text.)

(b)

**DIVISION OF CONSUMER AFFAIRS  
BOARD OF MORTUARY SCIENCE**

**Advertising; Referral Fees**

**Adopted Amendment: N.J.A.C. 13:36-5.12**

**Adopted New Rule: N.J.A.C. 13:36-5.20**

Proposed: September 8, 1992 at 24 N.J.R. 3016(a).

Adopted: December 15, 1992 by the Board of Mortuary Science,  
Michael A. Petrolle, President.

Filed: January 14, 1993 as R.1993 d.76, **with a substantive change**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:7-37 and 38.

Effective Date: February 16, 1993.

Expiration Date: September 27, 1994.

The Board of Mortuary Science afforded all interested parties an opportunity to comment on the proposed amendment and new rule, N.J.A.C. 13:36-5.12 and 5.20, relating to advertising and referral fees. The official comment period ended on October 8, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 8, 1992, at 24 N.J.R. 3016(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey State Funeral Directors Association and Mark Samuel Ross, Esq.

A full record of this opportunity to be heard can be inspected by contacting the Board of Mortuary Science, Post Office Box 45009, Newark, New Jersey 07101.

**No comments were received** during the 30-day comment period.

**Summary of Agency-Initiated Change:**

Upon a final review of the proposal, the Board has noted that the proposed deletion of N.J.A.C. 13:36-5.12(d)1 could be misread to permit the advertising conduct prohibited in N.J.A.C. 13:36-5.12(e)1. While paragraph (d)1 prohibited the use—in any mortuary advertisement—of the name of a person not licensed by the Board unless the unlicensed person was obviously identified as unlicensed, new paragraph (e)1 restates that prohibition with specific reference to **testimonial advertising**. The Board's intent was to specifically address an area where the prohibition would be most important—testimonials. The Board did not, however, intend to effect a narrowing of the class of advertisements to which the disclosure would apply, since use of an unlicensed person's name may appear in advertising other than testimonials. Accordingly, the Board has retained paragraph (d)1 upon adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

13:36-5.12 Advertising

(a)-(c) (No change.)

(d) In addition, it shall be deceptive and misleading for any advertisement to contain the following:

\*1. **The name of a person not licensed by the Board in connection with the name of a mortuary in any manner whatsoever, unless the unlicensed person is clearly and obviously identified in the advertisement as such by the use of the phrase "unlicensed and not qualified to make funeral arrangements, embalm or conduct funerals". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.\***

Recodify proposed 1.-4. as \*2.-5.\* (No change in text.)

\*[5]\*\*6.\* A claim of professional superiority or superior quality of services or merchandise, unless such claim can be substantiated by the licensee upon demand by the Board.

\*[6]\*\*7.\* Intimidation, undue pressure or undue influence.

(e) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed occupational misconduct.

1. The name of a person not licensed by the Board when appearing in any testimonial for a mortuary shall be accompanied by the following: "unlicensed and not qualified to make funeral arrangements, embalm or conduct a funeral". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

Recodify existing (e)-(h) as (f)-(i) (No change in text.)

13:36-5.20 Referral fees

It shall be occupational misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a purchaser of goods and services. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of occupational services.

**(a)****VIOLENT CRIMES COMPENSATION BOARD****Moneys Received from Other Sources****Adopted Amendment: N.J.A.C. 13:75-1.19**

Proposed: November 16, 1992 at 24 N.J.R. 4239(a).

Adopted: January 6, 1993 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Filed: January 13, 1993 as R.1993 d.74, **without change**.

Authority: N.J.S.A. 52:4B-9.

Effective Date: February 16, 1993.

Expiration Date: June 5, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows:

13:75-1.19 Moneys received from other sources

(a) (No change.)

(b) "Source or sources" means a source of benefits or advantages which the claimant has received in lieu of economic loss or which is readily available to the claimant from, but not limited to:

1.-8. (No change.)

9. The net amount received by the victim or claimant in excess of \$1,000 in the case of any related civil suit for damages and all proceeds or recovery to the victim or claimant from any collateral action or claim based upon or arising out of the circumstances giving rise to claimant's petition before the Board.

i. (No change.)

**(b)****DIVISION OF CRIMINAL JUSTICE****Distribution of Forfeited Property****Readoption with Amendments: N.J.A.C. 13:77**

Proposed: December 21, 1992 at 24 N.J.R. 4492(a).

Adopted: January 22, 1993 by Robert J. Del Tufo, Attorney General of New Jersey.

Filed: January 22, 1993 as R.1993 d.90, **without change**.

Authority: N.J.S.A. 2C:64-6.

Effective Date: January 22, 1993, Readoption;

February 16, 1993, Amendments.

Expiration Date: January 22, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:77.

Full text of the adopted amendments follows:

13:77-2.4 Forfeiture fund for participating law enforcement agency

(a) The contributive share of a county or municipal participating law enforcement agency shall be placed in a Special Law Enforcement Fund established by the entity funding the law enforcement agency which receives the forfeited property. All interest or income earned on or with this forfeiture fund shall remain in the fund for the sole use of the law enforcement agency. Monies in a Special Law Enforcement Fund shall be used for law enforcement purposes only and may not be used for payment of regular salaries or to create new personnel positions, to pay dues or fees in an organization that represents any interest other than a law enforcement interest, such as a bar association, or to pay any expense imposed as a condition of maintaining professional standing, such as the FAIR Act Attorney Fee. If approved by the Attorney General, forfeiture funds may be used to pay the salaries of temporary employees hired for a specific function, such as persons with a special expertise which is needed

for a particular investigation. Funds may be expended from the forfeiture fund only upon the request of the participating law enforcement agency, accompanied by a written certification that the request complies with the provisions of this chapter, and only upon appropriation to the participating law enforcement agency in accordance with the accepted budgetary provisions of its funding entity. Any expenditure of forfeiture funds, like the expenditure of other public funds, shall be subject to the bidding requirements of the funding entity.

(b) (No change.)

13:77-3.3 Certain prohibitions on acquisition

No office-holder, employee or other agent of any prosecuting agency causing the sale of forfeited property, their spouses or dependent children shall purchase or otherwise acquire, through such sale, title to forfeited property.

13:77-4.2 Criteria for apportioning forfeited property

(a) In determining the contributing share of any participating law enforcement agency, the prosecuting agency shall consider the following enumerated factors:

1.-4. (No change.)

5. The law enforcement agency actively participates in and contributes personnel or other resources to a multi-jurisdictional task force.

Recodify existing 5. and 6. as 6. and 7. (No change in text.)

13:77-6.1 Monitoring, reporting and auditing procedures

(a)-(c) (No change.)

(d) The prosecutor of each county may audit the forfeiture records of any municipal law enforcement agency or any coalition of municipal law enforcement agencies within that county. The cost of the audit may be assessed against the audited agency's law enforcement trust fund.

**TREASURY-GENERAL****(c)****DIVISION OF PENSIONS AND BENEFITS****Administration****Purchase Terms; Grace Period****Adopted Amendment: N.J.A.C. 17:1-4.12**

Proposed: November 16, 1992 at 24 N.J.R. 4239(b).

Adopted: January 14, 1993 by Margaret M. McMahon, Director, Division of Pensions and Benefits.

Filed: January 19, 1993 as R.1993 d.81, **without change**.

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: February 16, 1993.

Expiration Date: May 6, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

17:1-4.12 Purchase terms; grace period

A member who receives a written optional purchase cost quotation is given a 60-day grace period to confirm that he or she wishes to make the purchase of credit. If the confirmation of the purchase is not received from the member within 60 days, the cost of purchase must be recalculated to determine if any change in the cost is warranted as a result of change in age or salary.

**(a)**

**DIVISION OF PENSIONS AND BENEFITS  
Public Employees' Retirement System  
Election of Member-Trustee**

**Adopted Amendment: N.J.A.C. 17:2-1.4**

Proposed: October 19, 1992 at 24 N.J.R. 3690(a).  
Adopted: January 13, 1993 by the Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Acting Secretary.

Filed: January 15, 1993 as R.1993 d.78, **without change**.

Authority: N.J.S.A. 43:15A-17.

Effective Date: February 16, 1993.

Expiration Date: November 8, 1994.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

17:2-1.4 Election of member-trustee

(a)-(h) (No change.)

(i) If there are at least three candidates in an election for a member-trustee and the victorious candidate dies prior to the beginning of his or her term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) may be selected, at the Board's discretion, to fill the Board vacancy caused by the death of the successful candidate.

**TREASURY-TAXATION**

**(b)**

**DIVISION OF TAXATION**

**Organization of the Division of Taxation  
Office of Inspection Background Investigations**

**Adopted New Rule: N.J.A.C. 18:1-1.3**

Proposed: November 16, 1992 at 24 N.J.R. 4240(a).  
Adopted: January 15, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: January 19, 1993 as R.1993 d.82, **without change**.

Authority: N.J.S.A. 52:14B-3 and 54:1-8.

Effective Date: February 16, 1993.

Expiration Date: July 21, 1994.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows:

18:1-1.3 Office of Inspection background investigations

(a) The Office of Inspection may conduct background inquiries on applicants for Division positions to ensure that only qualified individuals of good character are appointed and that information contained on Taxation employment applications is accurate and complete. The inquiry will be conducted and the acquired information will be kept confidential in accordance with the Civil Service Act (N.J.S.A. 11A:1-1, et seq.) and any other applicable laws, and may include the following:

1. Appropriate checks of records of criminal convictions and pending criminal charges;
2. State of New Jersey tax filing and payment record check, to assure that the applicant has complied with State tax laws;
3. Credit checks, to compare an applicant's credit information with the following:
  - i. The information listed on the application for employment with the Division of Taxation; and
  - ii. The information obtained through the New Jersey tax filing and payment record check, authorized under (a)2 above;

4. Confirmation of employment and checking on the reasons for separation;
5. Contacting references, as required;
6. Confirmation of any education listed on a candidate's application; and
7. Other inquiries, including interviews, which stem from the above inquiries and which directly relate to criminal convictions or pending charges, tax compliance, financial responsibility, employment history, references, education, or other qualifications for the position sought.

**(c)**

**DIVISION OF TAXATION**

**Gross Income Tax  
Priorities in Claims to Setoff**

**Adopted Amendment: N.J.A.C. 18:35-2.11**

Proposed: June 1, 1992 at 24 N.J.R. 1967(b).  
Adopted: January 22, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: January 25, 1993 as R.1993 d.94, **without change**.

Authority: N.J.S.A. 54:4-8.64 and 54A:9-8.1.

Effective Date: February 16, 1993.

Expiration Date: June 7, 1993.

**Summary of Public Comment and Agency Response:**

The Division received only one comment on the amendment which indicated that the amendment was clear and appropriate. Said comment was received from the State Taxation Committee of the New Jersey Society of Certified Public Accountants.

**Full text** of the adoption follows.

18:35-2.11 Priorities in claims to setoff

(a) (No change.)

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead rebates:
  - i. A local property tax deficiency;
  - ii. Any unpaid child support;
  - iii. A State tax deficiency;
  - iv. Other agencies, including the Internal Revenue Service, by date of claim.
2. With respect to gross income tax refunds:
  - i. Any unpaid child support;
  - ii. A State tax deficiency;
  - iii. Other agencies, including the Internal Revenue Service, by date of claim.

**OTHER AGENCIES**

**(d)**

**ELECTION LAW ENFORCEMENT COMMISSION**

**Notice of Administrative Correction  
Public Financing of Primary Election for Governor  
Matching of Funds; Disclosure of Information;  
Application to Sponsor Debates**

**N.J.A.C. 19:25-16.18, 16.24 and 16.39**

**Take notice** that the Election Law Enforcement Commission has discovered errors in the text of N.J.A.C. 19:25-16.18, 16.24 and 16.39, as they are published in the 11-16-92 update to the New Jersey Administrative Code, at variance with amendments to those rules effective November 16, 1992 (see 24 N.J.R. 3026(a) and 4274(a)).

At N.J.A.C. 19:25-16.18(g), the reference to "two photocopies of checks" should be "three photocopies of checks"; the phrase "approved for match" in N.J.A.C. 19:25-16.24 should be deleted; and the term "a private organization" in N.J.A.C. 19:25-16.39(a) should be "an organization."

## OTHER AGENCIES

Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the text of these rules is corrected.

Full text of the corrected rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

### 19:25-16.18 Matching of funds

(a)-(f) (No change.)

(g) The initial certification shall include [two] **three** photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least \$150,000.

(h)-(k) (No change.)

### 19:25-16.24 Disclosure of information

The statements and certifications submitted by a candidate in accordance with N.J.A.C. 19:25-16.18 (Matching of funds) shall not be public records and shall not be available for public inspection; provided, however, the Commission shall from time to time publish a listing which shall contain the information included in the statements and certifications for each contribution [approved for match], except that it shall not include the name, address or amount of contribution of any contributor whose contributions in the aggregate are \$100.00 or less unless the candidate authorizes such disclosure in writing.

### 19:25-16.39 Application to sponsor debates

(a) To be eligible for selection by the Commission to sponsor one or more of the interactive gubernatorial primary election debates, [a private] **an** organization:

1.-3. (No change.)

(b)-(c) (No change.)

(a)

## CASINO CONTROL COMMISSION

### Applications

### License and Registration Requirements

### Employee Licenses

### Employee License Credentials; Display; Temporary Credentials; Obligation to Obtain Renewed Credentials

### Adopted Amendment: N.J.A.C. 19:41-1.3

### Adopted New Rule: N.J.A.C. 19:41-1.4

Proposed: December 7, 1992 at 24 N.J.R. 4335(b).

Adopted: January 20, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 22, 1993 as R.1993 d.84, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(c) and (j).

Effective Date: February 16, 1993.

Expiration Date: May 12, 1993.

### Summary of Public Comments and Agency Responses:

COMMENT: The Sands Hotel and Casino and the Division of Gaming Enforcement both indicated that they did not object to the adoption of the proposal.

RESPONSE: Accepted.

COMMENT: TropWorld Casino and Entertainment Resort objected to the requirement in N.J.A.C. 19:41-1.4(g) that no more than three temporary license credentials may be issued to an employee during any 12-month period. TropWorld notes that if an employee's license credentials are lost on a Friday evening, three consecutive temporary license credentials may have to be issued before the employee could obtain replacement credentials on Monday, when Commission offices reopen. Further, no more temporary license credentials could be issued to that employee for the next twelve months.

RESPONSE: Accepted. While the purpose of the limitation in N.J.A.C. 19:41-1.4(g) is to prevent abuses of the temporary license credential process, that purpose will not be defeated if the permissible number of issuances is expanded somewhat. Accordingly, N.J.A.C.

## ADOPTIONS

19:41-1.4(e)4 and (g) will be amended to provide that no more than six temporary credentials can be issued to an employee in any 12-month period.

COMMENT: TropWorld also notes that it has an in-house requirement that its employees are not permitted to obtain temporary license credentials for more than three consecutive days. TropWorld suggests that N.J.A.C. 19:41-1.4(g) should be deleted from the proposed amendments, and that each casino licensee should be free to determine which of its employees are abusing the system, and to devise in-house procedures to address any such abuses.

RESPONSE: Rejected. The licensing system and the temporary credentials issued pursuant to it are the responsibility of the Commission, which has the exclusive authority to determine what constitutes an abuse of the temporary license credential procedure.

COMMENT: TropWorld further contends that it would be burdensome to require immediate written notification to a Commission inspection booth when a temporary license credential is issued, and suggests that verbal notification, given by telephone in "a reasonably timely manner," would be sufficient.

RESPONSE: Rejected. Under the proposed streamlined procedure, a Commission inspector need not be present when the temporary credential is issued. Immediate written notice to the Commission inspections booth of the issuance of such a credential is therefore essential. Moreover, in the Commission's opinion, the requirement of immediate written notice is not unreasonable or burdensome, and the requirement of a written notice eliminates the possibility of a dispute that a verbal notice was in fact given.

### Summary of Agency-Initiated Changes:

Various changes were made to proposed new rule N.J.A.C. 19:41-1.4 at adoption to reflect other amendments which had been adopted by the Commission during the comment period for this proposal. The primary purpose of the amendments which had been proposed to N.J.A.C. 19:41-1.3 in the current proposal, the deletion of subsections (d) through (h), was to consolidate all requirements concerning license credentials in one section, proposed new rule N.J.A.C. 19:41-1.4. Various amendments were adopted to N.J.A.C. 19:41-1.3 during the comment period for this proposal to recognize the applicability of these credential requirements to casino and casino key employees who are employed in casino simulcasting facilities (see 25 N.J.R. 348(b)). In order to include these intervening amendments in the adoption of proposed new rule N.J.A.C. 19:41-1.4, the Commission amended the new rule at adoption as follows: amendments to subsection (a) of 19:41-1.4 added "casino simulcasting facilities" and "satellite cages" to the list of covered locations where credentials are required; and subsections (b) and (e) were amended to include "casino simulcasting facilities" in the list of areas governed by those subsections. These changes do not alter in any way the substantive impact of the prior amendments to N.J.A.C. 19:41-1.3 or the purpose of the current adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

### 19:41-1.3 Employee licenses

(a)-(c) (No change.)

### 19:41-1.4 Employee license credentials; display; temporary credentials; obligation to obtain renewed credentials

(a) Each casino key employee and casino employee shall wear in a conspicuous manner his or her employee license credential issued by the Commission at all times while employed in the casino room **\***, **the casino simulcasting facility\*** or a restricted casino area including, without limitation, the casino \*[floor]\* **\*and casino simulcasting facility floors\***, the cashiers' cage **\*and satellite cages\***, the count rooms, the catwalk areas and the surveillance room.

(b) No casino licensee shall permit any casino key employee or casino employee to work in the casino room **\***, **the casino simulcasting facility\*** or a restricted casino area unless the employee is wearing his or her license credential as required by this section.

(c) Notwithstanding (a) and (b) above, the Chairman may, upon written request by a casino licensee and a showing of good cause, exempt certain position titles or persons from the requirements of this section. The Chairman may delegate the authority to make such determinations to the Director of the Division of Licensing.

(d) Each casino licensee shall provide each casino key employee and casino employee required to wear a Commission license credential pursuant to this section with a license holder, which shall contain the name of the casino hotel facility and shall permit the prominent display of the information contained on the license credential. Thirty days prior to the use of any such license holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(e) A temporary license credential may be issued by the casino security department of a casino licensee to a casino key employee or casino employee who does not have the license credential on his or her person, or whose license credential has been lost or destroyed, to enable the employee to enter the casino room\*, the casino simulcasting facility\* or a restricted casino area to perform employment duties, if the casino security department:

1. Verifies that the employee is listed in the casino licensee's current employee status report;

2. Verifies that the employee holds a valid license with appropriate endorsements to perform the job requirements of the position title in which the employee will be working;

3. Confirms the above employment and licensure information with the supervisor of the employee;

4. Verifies that fewer than \*[three]\* \*six\* temporary license credentials have been issued to the particular employee in the past 12 months; and

5. Immediately notifies the Commission inspection booth in writing that a temporary license credential has been issued, which notice shall include:

i. The name, license number and position title of the employee to whom the temporary credential was issued;

ii. The date and time that the temporary credential was issued; and

iii. The name and license number of the casino security department employee issuing the temporary credential.

(f) A temporary license credential issued pursuant to (e) above shall:

1. Contain the following information:

i. The name and license number of the employee to whom it was issued;

ii. The position title for which it was issued and the applicable position endorsements, if any;

iii. The date and time it was issued; and

iv. The name and license number of the casino security department employee who issued it;

2. Indicate on its face in a conspicuous manner that the temporary credential is void 24 hours after the time of its issuance; and

3. Be returned to the casino security department by the employee to whom it was issued no later than the end of the work shift of the employee.

(g) No more than \*[three]\* \*six\* temporary license credentials shall be issued to an employee in a 12-month period.

(h) Any holder of a Commission license credential shall promptly report the loss or destruction of a Commission license credential to the License Division of the Commission, and shall apply for a replacement license credential as soon as possible.

(i) The Commission shall notify an applicant for renewal of an employee license in writing when a renewal application is granted and the applicant shall appear in person at the Commission's Casino Employee License Information Unit in Atlantic City within 30 days of the notice to obtain his or her new license credential. Should the applicant fail to appear as required by this subsection, the Commission shall notify casino licensees that the applicant can no longer be employed in the licensed position after the expiration date of the applicant's current license credential until the applicant appears as required and receives his or her new license credential.

## (a)

**CASINO CONTROL COMMISSION****Applications  
Fees****Adopted Amendments: N.J.A.C. 19:41-9.8, 9.9, 9.9A, 9.10, 9.11, 9.14, 9.15, 9.16, and 9.17.**

Proposed: December 7, 1992 at 24 N.J.R. 4337(a).

Adopted: January 20, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 22, 1993 as R.1993 d.85, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(e), 70(e), 139 and 141.

Effective Date: February 16, 1993.

Operative Date: March 1, 1993.

Expiration Date: May 12, 1993.

**Summary of Public Comments and Agency Responses:**

Comments were received from the Division of Gaming Enforcement; Brian J. Molloy, Esq. of Wilentz Goldman & Spitzer; Paul-Son Dice & Card, Inc., Paul-Son Casino Supplies of New Jersey, Inc., Paul-Son Mexicana and Paul-Son Playing Cards (hereinafter, collectively "Paul-Son"); the Professional Dealers School; the Boardwalk & Marina Casino Dealers School of Atlantic City, Inc. ("Casino Dealers School"); the Casino Employment Licensing Assistance Center; the Atlantic Cape May Private Industry Council; the Sands Hotel & Casino ("the Sands"); Andersen Forrestal Copy & Design; and Marlene Passley, Adele L. Walls, Allison Ross, Alice Pierce, Megan M. Kotila, Roseann Maloney, William Hennigan and five other anonymous commenters.

COMMENT: Mr. Molloy inquired whether a casino service industry ("CSI") license application filed prior to the effective date of the amendments would be subject to the new fees.

RESPONSE: The new fees will be assessed upon any applicant whose complete application is filed on or after the operative date of the adopted amendments, March 1, 1993.

COMMENT: The Sands comments that the proposal "may be too much, too soon," and suggested that the proposed fees be reexamined.

RESPONSE: The Commission's reevaluation of its fee schedule was accomplished through a comprehensive and detailed review process initiated in February 1992. In promulgating the amended rules, the Commission has accomplished its goal of fairly reapportioning the costs of investigating and processing employee and CSI licenses and registrations.

COMMENT: The Division observed that the new fees for casino key employees, casino employees, hotel employee registrants and position additions/deletions are not disproportionate to the investigative and administrative costs attributable to such applicants, but rather appear to be proportionate adjustments for inflation in the period since the fees were last changed.

RESPONSE: The Commission agrees that the adjusted fees represent a fair reassessment of costs attributable to these types of applicants.

COMMENT: Comments stating general disagreement with the proposal were submitted by 12 commenters, several of which identified themselves as gaming-related casino employees. Other comments filed by the Casino Employment Licensing Assistance Center argue that the increased fees may put casino employment beyond the reach of many individuals. Ms. Passley also noted the increased financial burden for individual licensees. The Atlantic Cape May Private Industry Council, which administers and operates Federal and State funded job training programs, estimated that the proposed fees would increase its costs by 26 percent or \$25,600.

RESPONSE: As noted in the Summary, see 24 N.J.R. 4337(a), the Commission's licensing fees have not increased for many years, despite rising costs and the effects of inflation. Moreover, actual costs incurred by the regulatory agencies in investigating and processing these types of applications have always exceeded revenue from fee assessments. The proposed amendments nevertheless attempt to minimize, to the extent possible, the potential burden of any fee increases for individual applicants. Particularly significant to the commenters, there has been no increase in the renewal fee for gaming-related employee licenses. Those fees that are increased are below the figures that would represent an

adjustment for the Consumer Price Index, and substantial costs remain unrecovered. In response to requests from applicants, the Commission will also offer an optional installment plan, which defers the increased cost until such time as the applicant is licensed and employable. In addition, the Commission may waive the fees for initial casino employee licensure and hotel registration where an application is filed through a government funded job training program which would ordinarily have absorbed such license or registration fees (see N.J.A.C. 19:41-9.14 and 9.15).

COMMENT: The Sands comments that the new key employee fees would result in a 50 percent increase in the costs incurred by the Sands for casino key employee license renewals.

RESPONSE: The current \$500.00 fee covers only about one-half of the actual costs associated with key employee renewals. As noted in the proposal, key employee renewal fees have not been amended since the \$500.00 flat fee was adopted in 1988, and the new \$750.00 fee is still less than the \$913.00 figure that results if the current fee is simply adjusted for the Consumer Price Index.

COMMENT: The Sands comments that the increased fees for hotel registrations will increase the burden for applicants "who already have a difficult time scraping together" the current \$30.00 fee.

RESPONSE: The Commission's fee structure has always reflected the recognition that hotel employee registrants are often among the lowest paid casino employees. The fee covers only a small portion of costs, and has never been increased since initially adopted in 1982. Unlike other licenses and registrations issued by the Commission, this is a one-time payment for a lifetime registration which remains in effect unless revoked, suspended or otherwise restricted by the Commission. N.J.S.A. 5:12-94d.

COMMENT: In support of the proposal, the Division noted that the costs of investigating and licensing CSI's have historically exceeded fee assessments, and that projected future costs will still substantially exceed the new increased fees. In particular, the Division pointed to the considerable costs and out-of-pocket expenses attributable to the licensing of gaming-related CSI's, which are often large international corporations.

RESPONSE: The Commission agrees that the adopted amendments assure a reasonable balance between the recognition that CSI licensees cannot bear the full burden of licensing costs, and the need to fairly apportion the costs attributable to such licensees and applicants.

COMMENT: The Division pointed out that recent regulatory amendments increased by 50 percent the threshold level of business for licensure as a nongaming-related CSI. Vendors must now do \$75,000 (increased from \$50,000) in business with one casino, or \$225,000 (increased from \$150,000) with the entire casino industry, within any 12-month period before licensure under subsection 92c of the Act is required. N.J.A.C. 19:51-1.2(e). The Division commented that the proposed 30 percent increase in fees is not disproportionate, particularly since the increase in the threshold was calculated to offset the impact of inflation in the intervening period since it was last adjusted in 1982, a period that roughly corresponds to the interval since the fee was last adjusted in 1984.

RESPONSE: The Commission agrees, as evidenced by this adoption.

COMMENT: A number of comments objected to the increased CSI license and renewal fees. The Sands contended that the increased fees will discourage qualified vendors from applying for licensure. The Casino Employment Licensing Assistance Center argued that the increased fees will be beyond the means of small businesses. Likewise, the Professional Dealers School stated that while the increase to \$5,000 "would be understandable," the \$15,000 maximum, plus "out-of-pocket" expenses, "would cause great hardship on small operations." Casino Dealers School stated that the new three-tier payment schedule, along with payment for out-of-pocket expenses, "would make it virtually impossible for [it] to subsist in a financially stable manner as required by the regulations for gaming schools." It predicted "a devastating social and economic impact" on its gaming school.

RESPONSE: The concerns expressed by the commenters have always been a factor in determining CSI license fees. The Commission has never expected that such enterprises could pay more than a portion of the substantial costs attributable to their licensure. See N.J.A.C. 19:41-9.1. Although both gaming-related and nongaming-related CSI fees have been adjusted, the actual investigatory and administrative costs incurred in licensing these applicants still far exceed even the new increased fees.

By implementing the new three-tier fee schedule for gaming-related CSI's, the Commission will be able to equitably apportion costs relative to the hours of investigation and processing associated with that appli-

cation. Significantly, it is estimated that more than half of all such applicants will pay only the minimum \$5,000 fee.

COMMENT: Andersen Forrester Copy & Design, a nongaming-related CSI licensee and a women-owned small business, also commented that the increased \$2,000 fee for initial and renewal nongaming-related CSI licensure will be burdensome for small businesses. The commenter remarked that many minority and women-owned businesses, in particular, are small and struggling to stabilize. The commenter suggested that small businesses and minority and women-owned businesses should be eligible for reduced licensing fees.

RESPONSE: The CSI fee structure itself reflects a concern that, despite the considerable costs of licensing CSI's, many of these enterprises could not bear their full share of costs. The Act extends strict State regulation not only to casino licensees but to all related service industries as well. N.J.S.A. 5:12-1b(6), 1b(9). The costs associated with the licensing process are necessary to enable the regulatory agencies to ensure the integrity of the casino industry and ancillary industries as mandated by the Act. The rules, therefore, must be applied consistently with no differentiation based on business size.

COMMENT: Casino Dealers School cited the policy concerns discussed in a 1984 Commission proposal amending N.J.A.C. 19:41-9.8. (16 N.J.R. 1066(a)). The rule was amended at that time to eliminate the hourly billing of CSI applicants, and instead impose a flat fee of \$3,000. The commenter quotes the Commission's express intent to "reflect a realistic billing rate"; "foster competition among casino service industries"; and "eliminate the unlimited liability for licensing fees." Casino Dealers School argues that the adoption herein will "completely reverse the positive social impact" initiated by the 1984 amendments.

RESPONSE: Prior to 1984, CSI's were billed at an hourly rate for all investigatory and administrative hours directed related to the licensee. The minimum application and renewal fees were \$2,500 and \$2,000, respectively, but no maximum fee was set by the rules. It was this unlimited liability that led the Commission to impose flat fees for CSI licensure and renewal. Likewise, the final tier of the new three-tier structure for gaming-related CSI's is \$15,000, regardless of the number of investigatory and administrative hours billed beyond 2,000. This new structure is consistent with the express intent of the 1984 proposal to assure that those applicants and licensees which require a greater level of effort will be charged at an appropriate rate for such efforts.

COMMENT: The Casino Employment Licensing Assistance Center commented that the amount of the increased fees should be spread among the 12 licensed casinos. Similarly, Casino Dealers School of Atlantic City commented that the casino industry benefits from the training provided by licensed gaming schools, therefore "the unrecouped regulatory costs for gaming schools [should] be annually apportioned among all casino licensees."

RESPONSE: The Casino Control Act mandates that the Commission and Division be financed exclusively from fees charged to applicants, licensees and registrants. N.J.S.A. 5:12-139. Nevertheless, the Commission's fee structure has always reflected the judgement that the considerable costs of investigating and processing employee and CSI applications far exceed the amount that such applicants can reasonably be expected to pay. Gaming-related CSI fees, in particular, reflect only a fraction of the actual costs of investigation and processing. As a result, an annual year-end assessment is levied upon all casinos to make up for all shortfalls in revenues, an estimated \$12.9 million for fiscal year 1992. As previously discussed, while both gaming-related and nongaming-related fees are increased, even the adjusted fee assessments reflect only a small proportion of costs.

COMMENT: Paul-Son argues that the CSI fees should distinguish between the investigation and review required for initial licensure and that required for license renewal, particularly for a close corporation with a limited number of qualifiers. It thus suggests a category "which allows for a five hundred hour review process which would remain at the (current) \$3,000 application fee." Paul-Son contends that the assessment for out-of-pocket costs "will more than off-set any shortfall that the Commission or Division perceive now exists."

RESPONSE: CSI licensees and applicants bear only a fraction of the costs actually attributable to their licensure. Thus, the cost of 1,000 or even 500 investigatory and administrative hours is far greater than the \$5,000 fee assessment. The new fees provide a reasonable compromise between the need to fairly apportion the costs attributable to these applicants, and the recognition that the actual costs incurred cannot be entirely borne by such applicants. The commenter also fails to distinguish between costs of labor and "out of pocket" costs. The new three-tier

## ADOPTIONS

structure relates to the number of hours billed by the regulatory agencies in investigating and processing an application. Other expenses are often incurred during the conduct of an investigation, for example, travel expenses and the hiring of translators. While reimbursement for such expenses will increase the percentage of total costs recouped, such payments have no impact in offsetting the labor costs incurred.

COMMENT: Paul-Son suggests that the Commission should consider a "consolidated" application fee for its four companies, since they are "close corporations with a limited number of qualifiers" which, it argues "effectively are one for review purposes."

RESPONSE: An application fee is assessed upon each entity seeking licensure, or license renewal, as a casino service industry. At any rate, this comment does not pertain to any of the published amendments, and thus is beyond the scope of this adoption. If the commenter believes that new regulatory procedures are needed to address what it refers to as a "consolidated application," it may, as always, pursue such change through the rulemaking petition process.

COMMENT: The Sands argues that "the entire vendor licensing area requires an overhaul," rather than simply increasing the license fee schedule.

RESPONSE: The commenter's broad assertion is well beyond the scope of this proposal. Regulatory review of N.J.A.C. 19:41-9 was initiated with the goal of reevaluating the fee structure by fairly apportioning the costs attributable to each applicant.

COMMENT: The Division commented that the adjustment in the fee for labor organization registration appears minimal in that the average number of qualifying individuals for such associations is eight, and that such a new fee will likely not cover the initial or basic costs of the investigative review process, such as criminal record checks for that number of individuals.

RESPONSE: The Commission agrees, as evidenced by this adoption.

COMMENT: Ms. Passley questions whether investigatory costs have increased since "inquiry methods have become more concise."

RESPONSE: As mentioned in the proposal, CSI fees have not increased since 1984, and casino employee license fees since 1982. The fee for initial key employee licensure has not changed since a 1984 increase in the hourly rate, while key renewal fees were last amended in 1988. Fees for hotel employee and labor organization registration have not increased since initial adoption in 1982 and 1978, respectively. Obviously, the costs of labor and other expenses associated with investigation and processing have not remained static during this time period. The limited extent of the adopted increases does not even fully account for the effects of inflation on the costs incurred by the regulatory agencies.

COMMENT: The Sands states that it often advances the cost of license fees to its employees, which sums are repaid through payroll deductions. The Sands contends that it will be adversely affected by the fee increases due to the "abysmal experience had in collecting these sums."

RESPONSE: Casino licensees such as the commenter will in fact benefit from the adopted fee structure. The new fee schedule is expected to reduce the year-end assessment to casino licensees by approximately \$1.4 million. As stated in the proposal, 24 N.J.R. 4338(a), this should also make it easier for casinos to plan their budgets and help ensure that regulatory costs are fairly allocated.

### Summary of Agency-Initiated Changes:

N.J.A.C. 19:41-9.14(d) establishes an optional payment plan for employee licensees. The rule explains that the final payment is due "upon issuance of the plenary license," but omitted any explanation of when the final payment is due in those instances when the application is denied or withdrawn. The Casino Control Act mandates that the Commission establish fees "for the investigation and consideration of applications," which may be collected within five years from the time such amount becomes due and payable, whether the person owing the amount is a licensee or an applicant. N.J.S.A. 5:12-68, 141. Thus, the applicant must be held responsible for the full application fee, whether or not he or she is ultimately issued a license. Upon adoption, the rule is modified to make the final payment due within 30 days from the date that the license is granted, denied or withdrawn, or upon the prior issuance of the license. The Commission believes this newly added time frame to be reasonable for the final payments due from applicants.

N.J.A.C. 19:41-9.16, Employee license position additions and deletions, provides that if the addition of a position endorsed upon a license upgrades that license from gaming school employee or nongaming-related employee to gaming-related employee, then the applicant must pay an additional fee that represents the difference between the fees

## OTHER AGENCIES

for the two types of licenses. While the \$130.00 differential between a gaming school employee and a nongaming-related employee license is correctly cited, the difference between a nongaming and gaming-related employee license was erroneously stated as \$155.00. The correct \$100.00 amount is added upon adoption. N.J.A.C. 19:41-9.16 also imposes a flat fee of \$75.00 for the time and expense incurred by the Commission in processing a position endorsement request. In proposing the \$75.00 fee, it was the Commission's intent that the employee licensee pay the increased fee to cover the costs associated with processing a single application, without regard to whether the request therein is for one position or multiple positions. This intent is made clear in the adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

### 19:41-9.8 Gaming related casino service industry enterprise license fee

(a) In accordance with subsections 92a and b of the Act, all casino service industry enterprises offering goods and services which directly relate to casino, simulcast wagering or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming and dealing techniques, and casino security services, shall meet the standards established for casino key employees in order to be licensed. Such a license shall be issued for one year and shall be renewable annually for the first two renewal periods succeeding the issuance of the initial license and biennially thereafter.

(b) In order to recover the cost of the investigation and consideration of license applications by enterprises engaged in these industries, the initial license application and issuance fee for a subsection 92a casino service industry enterprise license shall be assessed as follows:

1. A minimum application charge of \$5,000;
2. An additional application charge of \$5,000 if the efforts of the Commission and the Division on matters directly related to the applicant require more than 1,000 hours but less than 2,000 hours of time attributable to processing and investigation of the application, or \$10,000 if such efforts require 2,000 or more such hours; and
3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division for matters directly related to the processing and investigation of the application.

(c) In order to recover costs for monitoring compliance with the Act and the regulations and for assuring the continued fitness of enterprises engaged in gaming related casino service industries, the application and issuance fee for the renewal of a subsection 92a casino service industry enterprise license shall be assessed in accordance with (b) above.

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92a casino service industry enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial installment payment required by the Commission and an additional fee of \$50.00 for the cost of processing such payment plan.

### 19:41-9.9 Non-gaming related casino service industry license fee

(a) In accordance with subsection 92c of the Act, all casino service industry enterprises offering goods and services not directly related to gaming operations to casino licensees or applicants on a regular or continuing basis shall be licensed to the standards established by the Commission. Under subsection 94d of the Act, such license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) The initial application and issuance fee for a three year non-gaming related casino service industry enterprise license shall be \$2,000.

(c) The application and issuance fee for the renewal of a three year non-gaming related casino service industry enterprise license shall be \$2,000.

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92c casino service industry enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial install-

## OTHER AGENCIES

ment payment required by the Commission and an additional fee of \$50.00 for the cost of processing such payment plan.

### 19:41-9.9A Junket enterprise license fees

(a) In accordance with subsection 102c of the Act, all qualifiers of junket enterprises shall meet the standards established for casino key employees in order for the junket enterprise to be licensed. Under subsection 94d of the Act, a junket enterprise license shall be issued for a three year period and shall be renewable for additional three year periods.

(b)-(c) (No change.)

(d) Any enterprise required to apply for the issuance or renewal of a junket enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial installment payment required by the Commission and an additional fee of \$50.00 for the cost of processing such payment plan.

### 19:41-9.10 Labor organization registration fee

Under section 93 of the Act, each labor organization seeking to represent employees licensed or registered under the Act and employed by a casino hotel or a casino licensee shall register with the Commission annually. The fee for each annual registration of a labor organization shall be \$250.00.

### 19:41-9.11 Casino key employee license fees

(a) Under section 89 of the Act, no person may be employed as a casino key employee unless such person is the holder of a valid casino key employee license.

(b) The fee for the issuance of a casino key employee license shall be as follows:

1. A minimum application charge of \$750.00, which shall be credited to the total fee; and
2. (No change.)
3. Payment for all unusual or out of pocket expenses incurred by the Commission and the Division on matters directly related to the applicant or licensee; provided, however, that the amount of the issuance fee shall not exceed \$4,000.

(c) The fee for the renewal of a casino key employee license shall be \$750.00.

### 19:41-9.14 Casino employee license fees

(a) Under section 90 of the Act, no person may be employed as a casino hotel employee unless such person is the holder of a valid casino employee license. The Act creates a distinction between casino employees whose functions are directly related to gaming activity and those whose functions are not so related. The fee schedule established herein for casino employees recognizes that distinction and the difference in effort generally required to investigate, consider and monitor the two classes of casino employees.

(b) Under subsection 94d of the Act, a casino employee license for a person whose position is directly related to gaming activity shall be issued for three years and be renewable for three year periods thereafter. The issuance fee for such a three year license shall be \$350.00. The renewal fee for such a three year license shall be \$225.00.

(c) Under subsection 94d of the Act, a casino employee license for a person whose position is not directly related to gaming activity shall be issued for three years and be renewable for three years periods thereafter. The issuance fee for such a three year license shall be \$250.00. The renewal fee for such a three year license shall be \$200.00.

(d) Any person who applies for the issuance of a casino employee license pursuant to (b) or (c) above may pay the appropriate application fee in accordance with the following schedule upon payment of an additional fee of \$10.00 to cover the cost of processing the payment plan:

1. An applicant for the issuance of a casino employee license for a position directly related to gaming may submit an initial payment of \$275.00 upon filing of the application and a subsequent payment of \$85.00 **\*[upon issuance of the plenary license]\* \*within 30 days from the date that the license is granted or denied or the application is withdrawn, or upon the prior issuance of the license\*.**

## ADOPTIONS

2. An applicant for the issuance of a casino employee license for a position not directly related to gaming may submit an initial payment of \$195.00 upon filing of the application and a subsequent payment of \$65.00 **\*[upon issuance of the plenary license]\* \*within 30 days from the date that the license is granted or denied or the application is withdrawn, or upon the prior issuance of the license\*.**

**\*(e) The Commission may waive the fee in (b) or (c) above for an applicant for initial licensure if:**

1. The applicant chooses to have such application filed on his or her behalf by or through an agency funded by State or Federal funds, the purpose of which agency is the administration or operation of job training or retraining programs; and

2. Such agency certifies to the Commission that its job training or retraining programs would customarily absorb the initial license fee on behalf of the applicant.\*

### 19:41-9.15 Casino hotel employee registration fees

(a) Under section 91 of the Act, no person may be employed as a casino hotel employee unless such person is registered with the Commission. Under subsection 94d of the Act, a casino hotel employee shall be registered with the Commission. A casino hotel employee registration shall remain in effect unless revoked, suspended, limited, or otherwise restricted by the Commission in accordance with the provisions of the Act. The one time registration fee for a casino hotel employee shall be \$60.00.

**\*(b) The Commission may waive the fee in (a) above in accordance with N.J.A.C. 19:41-9.14(e).\***

### 19:41-9.16 Employee license position additions and deletions

(a) Under subsections 89c, 90a and 90d of the Act, casino key employee licenses and casino employee licenses shall have endorsed upon them the particular position which the licensee is qualified to hold. In addition to any other fee or charge imposed by the Act and this subchapter, **\*[a]\* \*each application\* \*request]\*** to endorse **\*[any]\* \*one or more\* additional authorized \*[position]\* \*positions\* upon a license shall require payment of \$75.00 for each such **\*[additional position]\* \*application\*.** Where an additional position would change the license from a gaming school employee to a casino employee gaming related, the applicant shall pay an added \$130.00. Where an additional position would change the license from casino employee non-gaming related to casino employee gaming-related, the applicant shall pay an added **\*[\$155.00]\* \*\$100.00\*\***; provided, however, that if such request is made in the period before licensure, the applicant shall only be required to pay the additional \$155.00 fee for the first position which is added to the license]\*.**

(b)-(c) (No change.)

(d) Any license upon which two or more positions have been endorsed shall expire when the term for any position endorsed thereon first expires in accordance with subsection 94d of the Act.

(e) (No change.)

### 19:41-9.17 Miscellaneous administrative fees

(a) Lost licenses shall be replaced for a fee of \$6.00.

(b) Requests to change a name or address on a license shall require a fee of \$6.00.

(c) A processing fee of \$15.00 shall be imposed upon any applicant for a casino service industry enterprise license or junket enterprise license which submits a check in payment of an application fee which is dishonored and returned by a bank after deposit.

(a)

**CASINO CONTROL COMMISSION****Accounting and Internal Controls****Exchange of Coupons for Gaming Chips at Gaming Tables****Adopted Amendments: N.J.A.C. 19:45-1.1, 1.16, 1.18, 1.20, 1.33 and 1.46**

Proposed: November 16, 1992 at 24 N.J.R. 4243(a).

Adopted: January 13, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 13, 1993 as R.1993 d.75, **with a technical change** not requiring additional public notice and comment (see N.J.S.A. 1:30-4.3) and with the proposed amendment to N.J.A.C. 19:45-1.2 not being adopted.

Authority: N.J.S.A. 5:12-69(a), 70(f), (g) and (l); 99(a)(4)-(a)(9), 100(k) and 102(m)3.

Effective Date: February 16, 1993.

Expiration Date: March 24, 1993.

**Summary of Public Comment and Agency Response:**

COMMENT: Grete Bay Hotel and Casino, Inc. (Sands Hotel and Casino) and the Division of Gaming Enforcement both indicated that they supported adoption of the proposal.

RESPONSE: Accepted.

**Summary of Agency-Initiated Changes:**

The proposed amendment to N.J.A.C. 19:45-1.2 was not adopted. Intervening amendments to that section (now revised and recodified as N.J.A.C. 19:45-1.9(e)) rendered such amendments unnecessary (see 24 N.J.R. 2692(b) and 4570(a)).

The reference in N.J.A.C. 19:45-1.46(o) to N.J.A.C. 19:45-1.2 has been changed to N.J.A.C. 19:45-1.9, to reflect intervening amendments to that section, as noted above.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## 19:45-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...  
 "Coupon" means a document which is issued in accordance with the coupon redemption and complimentary distribution programs in N.J.A.C. 19:45-1.46(a).

...  
 "Table game drop" means the sum of the total amount of currency, coin and coupons, and the total amounts recorded on issuance copies of Counter Checks removed from the drop box.

"Table game win or loss" means the amount of gaming chips and plaques and cash won from patrons at gaming tables less the amount of gaming chips, plaques and coins won by patrons at gaming tables. The table game win or loss is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits, and issuance copies of Counter Checks removed from a drop box, and subtracting the amount recorded on the Opener and the total of amounts recorded on Fills removed from a drop box.

## 19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino shall have attached to it a secure metal container known as a "drop box" in which shall be deposited all cash, coupons exchanged at the gaming table for gaming chips and plaques, issuance copies of Counter Checks exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms, and Table Inventory forms. Each drop box shall have:

1. (No change.)

2. A separate lock securing the drop box to the gaming table, the key to which shall be different from each of the keys to locks securing the contents of the drop box;

3. A slot opening through which currency, coins, coupons, forms, records, and documents can be inserted into the drop box;

4. (No change.)

5. Permanently imprinted or impressed thereon, and clearly visible from a distance of 20 feet, a number corresponding to a permanent number on the gaming table to which it is attached and a marking to indicate game and shift, except that emergency drop boxes may be maintained without such number or marking, provided the word "emergency" is permanently imprinted or impressed thereon and, when put into use, are temporarily marked with the number of the gaming table and identification of the game and shift, and provided further, that the casino obtains the express written approval of the Commission before placing an emergency drop box into use.

(b) Each bill changer in a casino shall have contained in it a secure metal container known as a "slot cash storage box," in which shall be deposited all cash inserted into the bill changer. Each slot cash storage box shall:

- 1.-4. (No change.)

5. Have an asset number, at least two inches in height, permanently imprinted, affixed or impressed on the outside of the slot cash storage box which corresponds to the asset number of the slot machine to which the bill changer has been attached, except that emergency slot cash storage boxes may be maintained without such number, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the asset number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of the Commission before placing an emergency slot cash storage box into use.

(c)-(d) (No change.)

## 19:45-1.18 Procedure for accepting cash and coupons at gaming tables

(a) Whenever cash or a coupon is presented by a patron at a gaming table for exchange for gaming chips or plaques:

1. The cash or coupon shall be spread on the top of the gaming table by the dealer or boxperson accepting it in full view of the patron who presented it and the casino supervisor assigned to such gaming table;

2. The amount of the cash or coupon shall be verbalized by the dealer or boxperson accepting it in a tone of voice calculated to be heard by the patron who presented it and the casino supervisor assigned to such gaming table; and

3. Immediately after an equivalent amount of gaming chips or plaques has been given to the patron, the cash or coupon shall be taken from the top of the gaming table and placed by the dealer or boxperson into the drop box attached to the gaming table.

(b) A casino licensee may, in its discretion, require the coupon to be cancelled upon acceptance by the dealer or boxperson, in a manner approved by the Commission, so as to preclude its subsequent use.

## 19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino or casino simulcasting facility is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino licensee shall cause or permit gaming chips, coins or plaques to be added to or removed from, such table inventory during the gaming day except:

1. In exchange for cash, coupons, or issuance copies of Counter Checks presented by casino patrons in conformity with the provisions of N.J.A.C. 19:45-1.18 and 1.25;

- 2.-5. (No change.)

(b)-(c) (No change.)

## 19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a)-(g) (No change.)

## OTHER AGENCIES

(h) Procedures and requirements for conducting the count shall be the following:

1. (No change.)
2. In full view of the closed circuit television cameras located in the count room, the contents of each drop box or slot cash storage box shall be emptied on the count table and either manually counted separately on the count table or counted on a currency or coupon counting machine which has been approved by the Commission and is located in a conspicuous location on, near or adjacent to the count table;
3. (No change.)
4. The contents of each drop box or slot cash storage box shall be segregated by a count team member into separate stacks on the count table by each denomination of coin, currency and coupon, and by type of form, record or document, except that the Commission may permit the utilization of a machine to automatically sort currency or coupons by denomination;
5. Each denomination of coin, currency and coupon shall be counted separately by one count team member who shall place individual bills, coins and coupons of the same denomination on the count table in full view of a closed circuit television camera, after which the coin, currency and coupons shall be counted by a second count team member who is unaware of the result of the original count and who, after completing this count, shall confirm the accuracy of the total, either verbally or in writing, with that reached by the first count team member, except that the Commission may permit a casino licensee to perform aggregate counts by denomination of all currency and coupons collected in substitution of the second count by drop box or slot cash storage box, if the Commission is satisfied that the original counts are being performed automatically by a machine that counts and automatically records the amount of currency or coupons, and that the accuracy of the machine has been suitably tested and proven. The Commission will permit the utilization of currency and coupon counting machines if prior to the start of the count, in the presence of a Commission inspector, the count room supervisor shall:
  - i. Verify that the counting machine has a zero balance on its terminal unit display panel and has a receipt printed which denotes "-0- cash or coupons on hand" and "-0- notes or coupons in machine," or some other means to indicate that the machine has been cleared of all currency and coupons.
  - ii. Visually check the counting machine to be sure there are no bills or coupons remaining in the various compartments of the machine.
  - iii. Supervise a count team member who shall randomly select a drop box or slot cash storage box and place the entire contents of the drop box or slot cash storage box into the first counting machine, which shall count the currency or coupons by denomination and produce a print out of the total amount of currency or coupons by denomination. Any soiled or off-sorted bills or coupons shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the counting machine and any adjustments thereto shall not be shown to anyone until completion of the final verification process.
  - iv. Supervise a second count team member, independent of the team member performing the initial count by machine, who shall manually count and summarize the currency and coupons of the drop box or slot cash storage box counted in (h)5iii above. The total shall be posted and maintained separately from the total posted in (h)5iii above. This total shall not be shown to anyone until completion of the final verification process.
  - v. Supervise the second count team member passing the currency or coupons to a count team member, who is unaware of the results of the manual count. The count team member shall count the contents of the drop box slot cash storage box counted in (h)5iii above using a second counting machine. Such machine shall produce a printout of the total amount of currency or coupons contained in the drop box or slot cash storage box. Any soiled or off-sorted bills or coupons shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the

## ADOPTIONS

counting machine and any adjustments thereto shall not be shown to anyone until completion of the final verification process.

- vi. Following the completion of the test procedures, compare the totals from the test receipts of both counting machines, as computed in (h)5iii and (h)5v, to the manual total computed in (h)5iv. If the three totals compared above are in agreement, the count room supervisor will sign and date the test receipts and forward them to the Accounting Department at the end of the count process.
- vii. If the three totals do not agree, appropriate repairs shall be made to the counting machine and the procedures in (h)5i through (h)5vi shall be repeated until all totals are in agreement. The Commission shall not permit the counting machine to be used until these totals are in agreement.
6. Any coupon placed in a drop box shall be counted and included as gross revenue, pursuant to N.J.S.A. 5:12-24, without regard to the validity of the coupon.
7. Any coupon which has not already been cancelled upon acceptance or during the count shall be cancelled prior to the conclusion of the count, in a manner approved by the Commission.
8. As the contents of each drop box are counted, one count team member shall record on a Master Game Report or supporting documents, by game, table number, and shift, the following information:
  - i-iv. (No change.)
  - v. The total amount of each denomination of coupon;
  - vi. The total amount of all denominations of coupons; Recodify existing v.-xiii. as vii.-xv. (No change in text.)
9. After the contents of each drop box are counted and recorded, one member of the count team shall record by game and shift on the Master Game Report, the total amount of currency, coin and coupons, Table Inventory Slips, Counter Checks, Fills, and Credits counted, and win or loss, together with such additional information as may be required on the Master Game Report by the Commission or the casino licensee.
10. Notwithstanding the requirements of (h)8 and (h)9 above, if the casino licensee's system of internal controls provides for the recording on the Master Game Report or supporting documents of Fills, Credits, Counter Checks and Table Inventory Slips by cage cashiers prior to commencement of the count, a count team member shall compare for agreement the totals of the amounts recorded thereon to the Fills, Credits, Counter Checks and Table Inventory Slips removed from the drop boxes.
11. (No change in text.)
12. Notwithstanding the requirements of (h)8 and (h)9 above, if the casino licensee's system of internal controls provides for the count team functions to be comprised only of counting and recording currency, coin and coupons, accounting department employees with no incompatible functions shall perform all other counting, recording, and comparing duties required by this section.
13. After preparation of the Master Game Report or Slot Cash Storage Box Report, each count team member shall sign the reports attesting to the accuracy of the information recorded thereon.
  - (i) At the conclusion of the count:
    1. All cash and coupons shall be immediately presented in the count room by a count team member to a reserve cash cashier who, prior to having access to the information recorded on the Master Game Report or the Slot Cash Storage Box Report and in the presence of a count team member and the Commission inspector, shall recount, either manually or mechanically, the cash and coupons presented, and attest by signature on the Master Game Report and Slot Cash Storage Box Report, if applicable, the amounts of cash and coupons counted, after which the Commission inspector shall sign the reports evidencing his or her presence during the count and the fact that both the cashier and count team have agreed on the total amounts of cash and coupons counted.
    2. The Master Game Report, after signing, and the Requests for Fills, the Fills, the Requests for Credits, the Credits, the issuance copies of the Counter Checks, the Table Inventory Slips and coupons removed from drop boxes shall be transported directly to the accounting department and shall not be available to any cashiers' cage personnel. All coupons shall be received and processed by the

## ADOPTIONS

## OTHER AGENCIES

accounting department in the manner set forth in N.J.A.C. 19:45-1.46(l).

3. (No change.)

4. If the casino licensee's system of internal controls does not provide for the forwarding from the cashiers' cage of the originals of the Fills, Credits, Requests for Credits, and the Requests for Fills, and the issuance copies of the Counter Checks, directly to the accounting department, the originals of all such slips recorded, or to be recorded, on the Master Game Report shall be transported from the count room directly to the accounting department.

(j) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption programs which entitle patrons to redeem coupons for complimentary cash, gaming chips or slot tokens issued in connection with bus and other complimentary distribution programs. No complimentary cash, gaming chips or slot tokens may be distributed by a casino licensee under any coupon redemption program that does not comply with the requirements of this section.

(b) Detailed procedures controlling all programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation as an accounting record by the casino licensee. Complimentary items or services, including cash or slot tokens, distributed through programs regulated by this subsection shall be reported in accordance with the procedures contained in (m) and (o) below.

(c) Each coupon or part thereof issued by a casino licensee shall only be redeemable for a specific amount of cash, gaming chips or slot tokens.

(d)-(h) (No change.)

(i) A coupon redeemable for gaming chips shall be redeemed only at a gaming table, and only by dealers and boxpersons, who shall accept the coupon in exchange for the stated amount of gaming chips and shall deposit the coupon into a drop box upon acceptance, in accordance with N.J.A.C. 19:45-1.18. All such coupons shall be designed and printed so that the denomination of the coupon is clearly visible from the closed circuit television system when accepted at a gaming table and deposited in a drop box.

Recodify existing (i)-(j) as (j)-(k) (No change in text.)

(l) All documentation, unused coupons, voided coupons and redeemed coupons maintained in conformity with (g), (h), (i) and (j) above shall be forwarded on a daily basis to the accounting department, where they shall be:

1. Reviewed for propriety of signatures on documentation and for proper cancellation of all coupons;

2. Recounted and examined for proper calculation, summarization and recording on documentation, including, without limitation, the Master Game Report;

3.-5. (No change.)

(m) Each casino licensee shall file a monthly report with the Commission and Division which shall include the following information:

1. For all programs regulated by (a) above, each casino licensee shall list by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash, gaming chips, slot tokens or simulcast wagers given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. (No change.)

Recodify existing (m) as (n) (No change in text.)

(o) In addition to the monthly report required to be filed in (m) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a)

above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash, gaming chips, slot tokens and simulcast wagers, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-\*[1.2]\*\*1.9\*.

(a)

## CASINO CONTROL COMMISSION

### Gaming Equipment

### Dice; Receipt, Storage, Inspections and Removal From Use

### Cards; Receipt, Storage, Inspections and Removal From Use

### Adopted Amendments: N.J.A.C. 19:46-1.16 and 1.18

Proposed: December 7, 1992 at 24 N.J.R. 4339(a).

Adopted: January 20, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 22, 1993 as R.1993 d.86, **without change**.

Authority: N.J.S.A. 5:12-69(a) and (c), 99(a) and 100(b).

Effective Date: February 16, 1993.

Expiration Date: April 28, 1993.

### Summary of Public Comment and Agency Response:

COMMENT: The Sands Hotel and Casino, Resorts International Hotel, Inc., TropWorld Casino and Entertainment Resort and the Division of Gaming Enforcement support adoption of the amendments, as published.

RESPONSE: Accepted.

Full text of the adoption follows:

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino or casino simulcasting facility are received from the manufacturer or distributor thereof, they shall, immediately following receipt, be inspected by a member of the security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area. Dice which are to be distributed to gaming pits or tables for use in gaming shall be distributed from a locked cabinet in the cashiers' cage or from another secure primary storage area, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b)-(h) (No change.)

(i) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.

**OTHER AGENCIES**

(j) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve.

1.-2. (No change.)

(k)-(l) (No change.)

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino or casino simulcasting facility from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

**ADOPTIONS**

(b)-(h) (No change.)

(i) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, a casino supervisor shall collect all used cards.

1.-2. (No change.)

(j)-(k) (No change.)

(l) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers with damaged cards, cards used during the gaming day, and all extra decks in card reserve with broken seals and shall return the envelopes or containers to the casino security department.

(m) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra decks in card reserve. If collected, all sealed decks shall either be cancelled or destroyed or returned to the storage area.

(n)-(p) (No change.)

# PUBLIC NOTICES

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Notice of Public Testimony Session Wednesday, March 17, 1993

Take notice that the following agenda items are scheduled for Notice of Proposal in the March 15, 1993 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, March 17, 1993 from 3:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, March 12, 1993.

#### Rule Proposals:

- N.J.A.C. 6:3, School Districts;
- N.J.A.C. 6:30, Adult Education; and
- N.J.A.C. 6:11, Certification Fees.

Please note: Publication of the above items is subject to change depending upon the actions taken by the State Board of Education at the March 3, 1993 monthly public meeting.

## CORRECTIONS

(b)

### THE COMMISSIONER

#### Notice of Receipt of Petition for Rulemaking On-The-Spot Correction

#### N.J.A.C. 10A:4-7

Petitioner: Kenneth Roberts, Southern State Correctional Facility

Take notice that on January 6, 1993, the Department of Corrections received a petition for rulemaking at N.J.A.C. 10A:4-7, On-The-Spot Correction.

Petitioner requests that the Department amend N.J.A.C. 10A:4-7 by adding a rule allowing appeal to the Superintendent for any On-The-Spot Correction sanction imposed.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

## ENVIRONMENTAL PROTECTION AND ENERGY

(c)

### SITE REMEDIATION PROGRAM

#### Notice of Availability Issue Paper on Department Authority to Assign the Right to Collect Treble Damages Pursuant to P.L. 1991, c.372.

Take notice that the New Jersey Department of Environmental Protection and Energy ("Department") is making available for review an issue paper discussing the Department's authority to assign the right to collect treble damages pursuant to P.L. 1991, c.372.

The New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (Spill Act) was amended by P.L. 1991, c.372 to provide

a statutory right of contribution and to authorize the Department to assign the right to collect treble damages to private parties if certain statutory conditions are met. How the Department will implement this latter provision raises numerous policy issues.

The Department, therefore, has developed an issue paper to facilitate public discussion on the issues relevant to the Department developing a workable and consistent process to assign the right to collect treble damages to private parties. It is the Department's intent, after receiving public input on the issues discussed in this working paper, to propose regulations to implement the treble damage provisions. To ensure the broadest possible public input into these regulations, the Department is inviting interested party involvement early in the process via discussion of this issue paper and through interested party workshops which will be held in May 1993.

Interested persons may obtain a copy of this issue paper or to indicate interest in attending a workshop by contacting:

Roxanne Repko, Site Remediation Program  
Department of Environmental Protection and Energy  
CN 028  
Trenton, NJ 08625  
609-292-1250

Interested persons may submit written comments on the issues raised in the paper to the Department address cited above. All written comments must be submitted by May 31, 1993. The Department will consider all comments received during the workshop or in writing in developing regulations but will not respond formally to any comments received.

(d)

### DIVISION OF SOLID WASTE MANAGEMENT

#### Notice of Public Hearings and Opportunity for Written Comment Statewide Municipal and Industrial Solid Waste Management Plan Update

Take notice that, pursuant to N.J.S.A. 13:1E-1 et seq., the Division of Solid Waste Management of the Department of Environmental Protection and Energy (DEPE) will hold public hearings on the proposed New Jersey Municipal and Industrial Solid Waste Management Plan Update: 1993-2002 as follows:

Tuesday, March 16, 1993  
10:00 A.M.-10:00 P.M.  
NJDEPE Public Hearing Room  
401 East State Street  
First Floor East Wing  
Trenton, New Jersey

Wednesday, March 17, 1993  
7:00 P.M.-11:00 P.M.  
Hackensack Meadowlands Development Commission  
Environmental Center Auditorium  
One DeKorte Park Plaza  
Lyndhurst, New Jersey

Thursday, March 18, 1993  
7:00 P.M.-11:00 P.M.  
Federal Aviation Administration Technical Center  
Atlantic City International Airport  
Main Building Auditorium  
Atlantic City, New Jersey

Submit written comments by March 31, 1993 to:

Richard J. McManus, Director  
NJDEPE Office of Legal Affairs  
CN-402  
Trenton, New Jersey 08625-0402

The purpose of the hearing is to receive oral and written comments on the DEPE's Statewide Municipal and Industrial Solid Waste Management Plan Update: 1993-2002 (hereinafter update). Pursuant to N.J.S.A. 13:1E-1 et seq., the DEPE has formulated, developed and periodically updated a Statewide plan for the environmentally sound management of solid wastes generated within New Jersey. The Statewide plan includes

the various guidelines, rules and regulations, and goals, objectives and policies of the DEPE; the solid waste management plans developed by the State's 22 solid waste management districts; and other solid waste management planning and program components developed to address the State's solid waste needs.

The major focus of the update is on revised goals, objectives and policies for the management of municipal and industrial solid waste which initially emanated from the efforts of Governor Florio's Emergency Solid Waste Assessment Task Force (hereinafter Governor's Task Force). On April 6, 1990, Governor Florio signed Executive Order No. 8 and appointed the Governor's Task Force to re-evaluate New Jersey's solid waste management policies and practices and to recommend appropriate changes. On July 6, 1990, the Governor's Task Force issued a preliminary report, which analyzed the composition and amount of the waste stream and identified the amount of waste that could be eliminated at the source, recycled or managed through traditional disposal practices.

On August 6, 1990, the Governor's Task Force issued its final report and recommended sweeping changes to the State's existing solid waste management policies and approach. The revised approach centers upon aggressive source reduction measures, achieving a 60 percent total waste stream recycling rate by December 31, 1995, and utilizing existing disposal capacity and developing new capacity on a regional basis to service all or a significant percentage of the solid waste generated within two or more counties. The Governor's Task Force also acknowledged the immediate need to implement the revised policy approach as quickly as possible toward achieving disposal self-sufficiency on a statewide basis.

The 1993 update uses the Governor's Task Force recommendations as the framework for a revised Statewide plan. The update supersedes the last adopted municipal and industrial solid waste plan of 1986 and specifically:

- Outlines the State's short and long-term goals and objectives in the areas of source reduction, recycling, regionalization, disposal self-sufficiency and other aspects of solid waste management, as well as the legislative, regulatory and policy framework necessary to achieve those goals;

- Describes the current status of solid waste management in New Jersey and evaluates the effectiveness of these programs in light of the requirements of the Solid Waste Management Act; and

- Describes how New Jersey's program fits within the national regulatory scheme for the management of municipal and industrial solid waste.

After the public hearings and the close of the comment period, the DEPE will carefully review all comments relevant to the update and prepare a document summarizing the comments and the DEPE's responses thereto, including revisions to the proposed update that the DEPE deems necessary and appropriate. Following this, the DEPE intends to adopt the update.

Copies of the proposed update are available at all libraries in the State Library depository system and at all county solid waste management offices. In addition, copies may be obtained through writing to the DEPE's Division of Solid Waste Management (DSWM), Office of Recycling and Planning, 840 Bear Tavern Road, Trenton, New Jersey 08625-0414 or by calling the DSWM at (609) 530-8203.

(a)

## GREEN ACRES PROGRAM

### Notice of Availability of Grant Funds and Application Deadline

#### Nonprofit Acquisition Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Environmental Protection and Energy hereby announces the availability of the following State grant funds:

- A. **Name of grant program:** Green Acres Nonprofit Acquisition Grant Program
- B. **Purpose:** The purpose of this program is to provide matching grant funds to private nonprofit organizations for the acquisition of land which will be open to the public for conservation and recreation purposes. The nonprofit organization will donate to the State a conservation restriction or historic preservation restriction, as the case may be, on the land acquired using the grant.

- C. **Amount of money in the grant program:** Up to \$20 million will be awarded in 50/50 matching grants in this funding round. A maximum of \$500,000 will be awarded per project unless the Green Acres determines that the project area is of special environmental concern or has extraordinary resource value.
- D. **Match:** The nonprofit organization must match state grant funds on a 50/50 basis. The match may be in the form of cash or a donation of the value of land being acquired as part of the approved project scope.
- E. **Individuals or organizations who may apply for matching grants under this program:** Tax exempt nonprofit organizations which qualify as a charitable conservancy for the purposes of P.L. 1979, c.378 (N.J.S.A. 13:8B-1 et seq.)
- F. **Qualifications needed by applicant to be considered for the grant program:** To qualify for grant consideration, the board of directors or governing body of the applying tax exempt nonprofit organization shall:
  - a. Demonstrate to the Commissioner of the Department of Environmental Protection and Energy that it qualifies as a charitable conservancy for the purposes of P.L. 1979, c.378 (N.J.S.A. 13:8B-1 et seq.);
  - b. Demonstrate that it has the resources to match the grant requested;
  - c. Agree to make and keep the lands accessible to the public, unless the Commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith;
  - d. Agree not to sell, lease, exchange, or donate the lands except to the State, a local government unit, another qualifying tax exempt nonprofit organization, or the Federal government for recreation and conservation purposes (then only with the prior approval of Green Acres);
  - e. Agree to execute and donate to the State, at no charge, a conservation restriction or preservation restriction, as the case may be, pursuant to P.L. 1979, c.378 (N.J.S.A. 13:8B-1 et seq.) on the lands to be acquired utilizing the grant.
- G. **Procedure for application:** Application packages may be requested from:

Martha Sullivan, Principal Planner  
Bureau of Green Trust Management  
Green Acres Program  
CN 412  
Trenton, NJ 08625-0412  
(609) 588-3490

- H. **Address of the division, office, or official receiving the application:** Same as above.
- I. **Dates applications will be accepted:** Applications must be submitted by May 28, 1993.
- J. **Dates by which applicant shall be notified of preliminary approval:** Applicants shall receive notice of preliminary approval no later than December 31, 1993.

(b)

## OFFICE OF REGULATORY POLICY

### Amendment to the Monmouth County Water Quality Management Plan

#### Public Notice

Take notice that on January 15, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment modifies the sewer service areas of both the Western Monmouth Utilities Authority (WMUA) and the Bayshore Regional Sewerage Authority (BRSA) in the northern part of Marlboro Township, known as Morganville, in accordance with the recent agreement between the two authorities. With the exception of the area zoned as a Senior Citizen Residential—Single Family District (RSCS) located on the northerly side of Wooleytown Road—Falson Lane, the area will be served by BRSA. The RSCS zone will be served by WMUA. There will be no flow

restrictions from the service area. Any changes to the service areas of the two authorities under this agreement will require amendment of the Monmouth County WQMP.

This amendment proposal was noticed in the New Jersey Register on September 21, 1992 at 24 N.J.R. 3442(a). A comment was received during the comment period and is summarized below with the Department's response.

COMMENT: A request for service to a lot in the Land Conservation (LC) Zone across Falsion Lane (Wooleytown Road) from the RSCS zone, which is to be sewerd by WMUA under this amendment, was made by the owner of the lot.

RESPONSE: This amendment does not change the sewer service area boundary in this vicinity; it does change the authority which will provide service to this area from BRSA to WMUA. The lot in question and the remainder of the LC Zone is shown to be served by septic systems. The LC Zone in Marlboro Township in general, does not provide for development at a density which requires sewer service. The WMUA indicates that it is not the intent of the Authority to provide sewer service to properties in the LC Zone at the current time. Should the zoning change or development be proposed in conformance with the LC zoning restrictions which would require sewer service, the Authority would consider amending the WMP to allow sewer service at the owner's expense. On a case-by-case basis, the Authority would allow, with the approval of the Department, service to properties which have documented malfunctioning septic systems which cannot be economically repaired. Again, such connection would be at the owner's expense.

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF CRIMINAL JUSTICE

#### Notice of Action on Petition for Rulemaking Administration and Maintenance Responsibilities for Law Enforcement Funds

#### N.J.A.C. 13:77-2.2, 2.4 and 2.5

Petitioner: John T. Paff, Chairman, FEAR (Forfeiture Endangers American Rights).

Take notice that on September 21, 1992, the Department of Law and Public Safety received a petition for rulemaking from John T. Paff, Chairman, FEAR (Forfeiture Endangers American Rights). The petition requests that the Department amend its forfeited property distribution rules N.J.A.C. 13:77-2.2, 2.4 and 2.5. Petitioner's stated purposes in requesting the amendments include (1) "clarification" of law enforcement fund administration and maintenance responsibilities and (2) public "control" of law enforcement fund expenditures.

Two requested amendments are intended to require the entity funding a prosecuting agency (and permit no other entity or agency) to establish, administer and maintain law enforcement funds for forfeited property. The third requested amendment is intended to require a funding entity to disburse funds from a Special Law Enforcement Fund only by resolution and only upon the entity's certification that the disbursement serves a law enforcement purpose. A formal notice of receipt of this rulemaking petition was published in the January 19, 1993 New Jersey Register at 25 N.J.R. 375(b).

Take further notice that the Department's own proposal to readopt with amendments its forfeited property distribution rules, N.J.A.C. 13:77, is adopted as published elsewhere in this issue of the New Jersey Register. Formal notice of that proposed readoption with amendments was published in the December 21, 1992 New Jersey Register (at 24 N.J.R. 4492(a)) and elsewhere. In addition, the Department is currently participating in legislative hearings on proposed amendments to the civil forfeiture statute, N.J.S.A. 2C:64-1 et seq., the source of authority for the N.J.A.C. 13:77 forfeited property distribution rules. Neither the Department's proposed rules readoption with amendments nor any known proposed statutory amendment contains the amendments requested in the present petition for rulemaking.

Accordingly, the Department needs more time to study the amendments requested in the present petition for rulemaking to determine (1) whether they are necessary to accomplish the purposes of N.J.S.A. 2C:64-1 et seq., (2) whether they are consistent with the purposes of N.J.S.A. 2C:64-1 et seq., or (3) whether they are contrary to the purposes of N.J.S.A. 2C:64-1 et seq., all in the context of the pending rules readoption with amendments and of the hearings on proposed statutory amendments. The Department intends to make its determinations and act on the petition for rulemaking by July 1993.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 4, 1993 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 21, 1992**

**NEXT UPDATE: SUPPLEMENT JANUARY 19, 1993**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
24 N.J.R. 319 and 508	February 3, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2651 and 2752	August 3, 1992		
24 N.J.R. 2753 and 2970	August 17, 1992		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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**ADMINISTRATIVE LAW—TITLE 1**

1:13A-1.2, 18.1, 18.2    Lemon Law hearings: exceptions to initial decision    24 N.J.R. 1843(a)

**Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)**

**AGRICULTURE—TITLE 2**

2:6    Animal health: biological products for diagnostic or therapeutic purposes    24 N.J.R. 2974(a)

2:6    Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes    24 N.J.R. 3981(a)

2:32-2.4    Sire Stakes Program: stallion standing full season    24 N.J.R. 3981(b)    R.1993 d.70    25 N.J.R. 463(a)

2:76-3.12, 4.11    Farmland preservation programs: deed restrictions on enrolled lands    25 N.J.R. 222(a)

2:76-6.15    Agriculture Retention and Development Program: lands permanently deed restricted    25 N.J.R. 223(a)

2:90-1.4, 1.5    Certification of soil erosion and sediment control plans    24 N.J.R. 3587(a)    R.1993 d.13    25 N.J.R. 65(a)

**Most recent update to Title 2: TRANSMITTAL 1992-5 (supplement October 19, 1992)**

**BANKING—TITLE 3**

3:18    Secondary Mortgage Loan Act rules    24 N.J.R. 3982(a)    R.1993 d.55    25 N.J.R. 463(b)

3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11    Secondary Mortgage Loan Act rules    24 N.J.R. 2760(a)    R.1993 d.50    25 N.J.R. 285(a)

3:42    Pinelands Development Credit Bank    25 N.J.R. 223(b)

**Most recent update to Title 3: TRANSMITTAL 1992-9 (supplement December 21, 1992)**

**CIVIL SERVICE—TITLE 4**

**Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)**

**PERSONNEL—TITLE 4A**

4A:2-4.1    Notice of termination at end of working test period: administrative correction    \_\_\_\_\_    \_\_\_\_\_    25 N.J.R. 686(a)

4A:3-5.3, 5.6, 5.9    Comparable time off restrictions    24 N.J.R. 3588(a)    R.1993 d.44    25 N.J.R. 290(a)

4A:4-2.6, 2.15    Promotional examinations    24 N.J.R. 3589(a)    R.1993 d.45    25 N.J.R. 291(a)

4A:4-6.4, 6.6    Selection and placement appeals    24 N.J.R. 4467(a)

4A:4-6.5    Medical and psychological examinations as condition of employment    24 N.J.R. 3596(a)    R.1993 d.46    25 N.J.R. 292(a)

4A:6    Leaves, hours of work, employee development, and awards program    24 N.J.R. 3590(a)    R.1993 d.47    25 N.J.R. 293(a)

**Most recent update to Title 4A: TRANSMITTAL 1992-3 (supplement October 19, 1992)**

**COMMUNITY AFFAIRS—TITLE 5**

5:10-25.2    Indirect apportionment of heating costs in multiple dwellings    24 N.J.R. 3597(a)    R.1993 d.39    25 N.J.R. 299(a)

5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7    Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions    24 N.J.R. 1144(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:18-1.5, 2.4, 2.5, 2.7, 3.1-3.5, 3.7, 3.13, 3.17, 3.20, 3.30, App. 3A, 4.7, 4.9, 4.11, 4.12, 4.19	Uniform Fire Code	25 N.J.R. 393(a)		
5:18-2.9, 2.12, 2.14, 2.16, 2.17	Uniform Fire Code: enforcement and penalties for violations	25 N.J.R. 397(a)		
5:18A-4.6	Fire Code enforcement: review of proposed action against certified fire official	25 N.J.R. 399(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)	R.1993 d.79	25 N.J.R. 686(b)
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)	R.1993 d.61	25 N.J.R. 463(c)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	24 N.J.R. 3457(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)	Expired	
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)		
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)		
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)		
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		

Most recent update to Title 5: TRANSMITTAL 1992-12 (supplement December 21, 1992)

#### MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

#### EDUCATION—TITLE 6

6:8-5.4	Corrective action by Commissioner: administrative correction	_____	_____	25 N.J.R. 299(b)
6:8-6	Programs and services for pupils at risk	24 N.J.R. 3494(a)	R.1993 d.40	25 N.J.R. 299(c)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)		
6:9	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:28-8.1, 8.3, 8.4	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:29-3.4	Medical examination requirement for interscholastic athletic participation	24 N.J.R. 4150(a)	R.1993 d.80	25 N.J.R. 686(c)
6:29-8	Nonpublic school nursing services	24 N.J.R. 3495(a)	R.1993 d.41	25 N.J.R. 300(a)
6:31-1.1-1.7, 1.9-1.16	Multiple indicators for exit from bilingual programs	24 N.J.R. 3497(a)	R.1993 d.14	25 N.J.R. 66(a)

Most recent update to Title 6: TRANSMITTAL 1992-7 (supplement December 21, 1992)

#### ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)	R.1993 d.2	25 N.J.R. 68(a)
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)		
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)		
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:8	Stormwater management	24 N.J.R. 4469(a)		
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)	R.1993 d.73	25 N.J.R. 464(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2-12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A-1, 2, 3, 5-14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:14A-1.9, 2.4, 3.9, 3.13, App. A, B; 13.5, App. H	Statewide Stormwater Permitting Program: administrative corrections	_____	_____	25 N.J.R. 687(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)	Expired	
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)	R.1993 d.77	25 N.J.R. 689(a)
7:25-18.1, 18.12, 18.14	Summer flounder management; otter and beam trawls	24 N.J.R. 4249(a)	R.1993 d.56	25 N.J.R. 303(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
7:26-1.4, 2.13, 6.3, 6.8	Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow	24 N.J.R. 1995(a)	R.1993 d.27	25 N.J.R. 92(a)
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)	R.1993 d.5	25 N.J.R. 98(a)
7:26-6.5, 6.6	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act rules	25 N.J.R. 100(a)		
7:26B-1.3, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)	R.1993 d.3	25 N.J.R. 100(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1	ECRA rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6-1.30, 8.4, 8.14-8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)		
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(a)		
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-25.7, 27.9, 27.10	Control and prohibition of air pollution by vehicular fuels: administrative corrections	_____	_____	25 N.J.R. 309(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:50-4.1, 4.70	Pinelands Comprehensive Management Plan: expiration of development approvals and waivers	25 N.J.R. 225(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		

**Most recent update to Title 7: TRANSMITTAL 1992-12 (supplement December 21, 1992)**

**HEALTH—TITLE 8**

8:2	Creation of birth record	24 N.J.R. 4325(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33C-10.1	Regionalized perinatal services: administrative correction to adoption notice	_____	_____	25 N.J.R. 580(a)
8:33G	Computerized tomography services: certification of need	24 N.J.R. 4221(a)	R.1993 d.87	25 N.J.R. 700(a)
8:33I-1	Megavoltage radiation oncology services: certification of need	24 N.J.R. 4222(a)	R.1993 d.88	25 N.J.R. 701(a)
8:33M-1.6	Bed need methodology for adult comprehensive rehabilitation services	24 N.J.R. 4225(a)	R.1993 d.89	25 N.J.R. 703(a)
8:33R	Psychiatric health care facilities and services: policy manual for planning and certificate of need reviews	24 N.J.R. 3598(a)	R.1993 d.29	25 N.J.R. 111(a)
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)		
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		
8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)	R.1992 d.502	25 N.J.R. 109(a)
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43E	Recodification (see 8:33R)	24 N.J.R. 3598(a)	R.1993 d.29	25 N.J.R. 111(a)
8:65-2.5	Controlled dangerous substances: physical security controls	24 N.J.R. 174(a)	Expired	
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b), 3174(a))	24 N.J.R. 735(a)		
8:71	Interchangeable drug products (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

**Most recent update to Title 8: TRANSMITTAL 1992-12 (supplement December 21, 1992)**

**HIGHER EDUCATION—TITLE 9**

9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)		
9:6A	State college personnel system	24 N.J.R. 3052(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)	R.1993 d.30	25 N.J.R. 310(a)

**Most recent update to Title 9: TRANSMITTAL 1992-6 (supplement December 21, 1992)**

**HUMAN SERVICES—TITLE 10**

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 4232(a)	R.1993 d.58	25 N.J.R. 583(b)
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)	Expired	
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:63-3.3, 3.8	Long-term care services: elimination of salary regions	25 N.J.R. 433(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)		
10:69A-2.1, 4.1-4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)		
10:72-1.1	New Jersey Care—Special Medicaid Program scope: administrative correction	_____	_____	25 N.J.R. 704(a)
10:81-11.4, 11.9	Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters	24 N.J.R. 2327(a)	R.1993 d.1	25 N.J.R. 115(a)
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:83-1.11	Supplemental Security Income (SSI) payment levels	25 N.J.R. 434(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)	R.1993 d.62	25 N.J.R. 584(a)
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	Emergency (expired 2-6-93)	R.1992 d.517	24 N.J.R. 4593(a)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)	R.1993 d.15	25 N.J.R. 116(a)
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)	R.1993 d.16	25 N.J.R. 117(a)
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)	R.1993 d.17	25 N.J.R. 124(a)
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)	R.1993 d.18	25 N.J.R. 127(a)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)		
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)	R.1993 d.19	25 N.J.R. 132(a)
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)	R.1993 d.20	25 N.J.R. 134(a)
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)	R.1993 d.21	25 N.J.R. 136(a)
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)	R.1993 d.22	25 N.J.R. 136(b)

**Most recent update to Title 10: TRANSMITTAL 1992-12 (supplement December 21, 1992)**

**CORRECTIONS—TITLE 10A**

10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	24 N.J.R. 435(a)		

**Most recent update to Title 10A: TRANSMITTAL 1992-7 (supplement December 21, 1992)**

**INSURANCE—TITLE 11**

11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)	R.1993 d.68	25 N.J.R. 588(a)
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:2-35.1-35.6	Insurer relief from FAIR Act obligations	24 N.J.R. 3212(a)	R.1993 d.24	25 N.J.R. 138(a)
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)		
11:3-16.12	Automobile insurance: public hearing and extension of comment period regarding filings reflecting paid, apportioned MTF expenses and losses	25 N.J.R. 56(a)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		
11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)		
11:3-29.1, 29.2, 29.4	Motor bus medical expense benefits coverage	24 N.J.R. 3605(a)	R.1993 d.25	25 N.J.R. 140(a)
11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)		
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)	R.1993 d.26	25 N.J.R. 141(a)
11:5-1.8	Real Estate Commission: deposit of monies paid to broker	24 N.J.R. 3483(a)	R.1993 d.8	25 N.J.R. 178(a)
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.15	Real Estate Commission: advertising by brokers and licensees	24 N.J.R. 3484(a)	R.1993 d.9	25 N.J.R. 178(b)
11:5-1.16	Real Estate Commission: documentation of offers and counter-offers	24 N.J.R. 3485(a)	R.1993 d.10	25 N.J.R. 179(a)
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.28	Real Estate Commission: surety bond posting by prelicensure schools	24 N.J.R. 3488(a)	R.1993 d.11	25 N.J.R. 180(a)
11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)		
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)		
11:16-2	Reports to National Insurance Crime Bureau regarding motor vehicle theft or salvage	24 N.J.R. 3606(a)	R.1993 d.48	25 N.J.R. 311(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:17-1.2, 2.3-2.15, 5.1-5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.3, 1.4, 1.5, 4.6	Insurance producers and limited insurance representatives: licensure and registration	25 N.J.R. 446(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.3	Licensure as insurance producer or registration as limited insurance representative: compliance deadline	24 N.J.R. 3220(a)	R.1993 d.49	25 N.J.R. 313(a)
11:19-2	Financial Examination Monitoring System: data submission by domestic insurers	24 N.J.R. 2999(a)	R.1993 d.69	25 N.J.R. 591(a)
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(a)		

**Most recent update to Title 11: TRANSMITTAL 1992-11 (supplement December 21, 1992)**

**LABOR—TITLE 12**

12:16-4.8	Board and room, meals and lodging in lieu of wages: 1993 rates	_____	_____	24 N.J.R. 3182(a)
12:18	Temporary Disability Benefits Program	25 N.J.R. 262(a)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:60	Prevailing wages for public works	25 N.J.R. 453(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		
12:100-4.2	Public employee safety and health: exposure to hazardous chemicals in laboratories	25 N.J.R. 453(b)		
12:100-4.2	Public employee safety and health: exposure to formaldehyde	25 N.J.R. 455(a)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)	R.1993 d.28	25 N.J.R. 180(b)
12:110	Public employee occupational safety and health: procedural standards	24 N.J.R. 4234(a)	R.1993 d.71	25 N.J.R. 595(a)
12:190	Regulation of explosives	24 N.J.R. 4235(a)	R.1993 d.72	25 N.J.R. 595(b)
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)	R.1993 d.51	25 N.J.R. 313(b)
12:235-9.4	Workers' Compensation appeal procedures regarding discrimination complaint decisions: extension of comment period	24 N.J.R. 3090(a)		

**Most recent update to Title 12: TRANSMITTAL 1992-4 (supplement November 16, 1992)**

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

**Most recent update to Title 12A: TRANSMITTAL 1992-3 (supplement December 21, 1992)**

**LAW AND PUBLIC SAFETY—TITLE 13**

7:6-1.45	Boat Regulation Commission: restrictions within Seven Presidents Park jetty areas	25 N.J.R. 57(a)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)		
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)		
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)		
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)	R.1993 d.93	25 N.J.R. 705(a)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:33-1.41, 1.43	Licensed ophthalmic dispensers: continuing education	25 N.J.R. 57(b)		
13:35-6.13	Bio-analytical laboratory directorships: license fees	24 N.J.R. 4011(a)	R.1993 d.91	25 N.J.R. 708(a)
13:35-6.13	Physician assistant licensing fees	24 N.J.R. 4334(a)	R.1993 d.92	25 N.J.R. 709(a)
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)	R.1993 d.76	25 N.J.R. 709(b)
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-13.1, 13.2	Nurse anesthetist: conditions for practice	24 N.J.R. 4020(a)		
13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)		
13:39-7.14	Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 266(a)		
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)	R.1993 d.60	25 N.J.R. 596(a)
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40A-1, 2, 2A, 3.6, 6.1, 6.2, 6.3	Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations	24 N.J.R. 3489(a)		
13:40A-6.1, 7	Board of Real Estate Appraisers: apprentice program	25 N.J.R. 267(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:44F	Rules of State Board of Respiratory Care	24 N.J.R. 2336(a)	R.1993 d.7	25 N.J.R. 185(a)
13:44G-14.1	Board of Social Work Examiners: fees for licensure, certification, and services	24 N.J.R. 2523(a)	R.1993 d.23	25 N.J.R. 191(a)
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)	R.1993 d.6	25 N.J.R. 192(a)
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)		
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:70-4.1, 4.2, 4.15, 9.41, 22.5	Thoroughbred racing: licensure fees; partnership registration	24 N.J.R. 4021(a)	R.1993 d.43	25 N.J.R. 314(a)
13:70-12.4	Thoroughbred racing: claimed horse	24 N.J.R. 4022(a)		
13:71-7.1, 7.5, 7.26, 7.35, 24.5	Harness racing: licensure fees; partnership registration	24 N.J.R. 4023(a)	R.1993 d.52	25 N.J.R. 314(b)
13:71-23.3A	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 269(a)		
13:72	Casino simulcasting of horse races	24 N.J.R. 3666(b)	R.1993 d.53	25 N.J.R. 315(a)
13:75-1.7	Violent Crimes Compensation Board: minimum compensable losses	24 N.J.R. 4491(a)		
13:75-1.19	Violent Crimes Compensation Board: moneys received from other sources by claimants	24 N.J.R. 4239(a)	R.1993 d.74	25 N.J.R. 710(a)
13:75-1.31	Violent Crimes Compensation Board: injury from crime of burglary	24 N.J.R. 4491(b)		
13:77	Division of Criminal Justice: distribution of forfeited property	24 N.J.R. 4492(a)	R.1993 d.90	25 N.J.R. 710(b)
13:81-1.2, 2.1	Statewide 9-1-1 emergency telecommunications system	24 N.J.R. 4493(a)		

**Most recent update to Title 13: TRANSMITTAL 1992-12 (supplement December 21, 1992)**

**PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14**

14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)		
14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)	R.1993 d.83	25 N.J.R. 692(a)
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust fund reporting	23 N.J.R. 3239(b)	R.1992 d.472	25 N.J.R. 193(a)
14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)		
14:9B	Private domestic wastewater treatment facilities	24 N.J.R. 1863(a)		
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)		
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:12-1.2, 3.6, 4.1-4.3, 5.3	Demand side management	24 N.J.R. 2804(a)		
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-9.2, 10.1-10.5	Cable television: testing of service and technical standards for system operation	24 N.J.R. 4497(a)		

**Most recent update to Title 14: TRANSMITTAL 1992-5 (supplement December 21, 1992)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ENERGY—TITLE 14A</b>				
<b>Most recent update to Title 14A: TRANSMITTAL 1992-3 (supplement October 19, 1992)</b>				
<b>STATE—TITLE 15</b>				
15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)	R.1993 d.54	25 N.J.R. 320(a)
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 1688(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 2531(a)		
<b>Most recent update to Title 15: TRANSMITTAL 1992-2 (supplement July 20, 1992)</b>				
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
<b>Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)</b>				
<b>TRANSPORTATION—TITLE 16</b>				
16:1-2.2	Records management: appraisal review analyses	25 N.J.R. 59(a)		
16:13	Rural Secondary Road Systems Aid: repeal	25 N.J.R. 59(b)		
16:20	Federal Aid Urban Systems: repeal	25 N.J.R. 60(a)		
16:28-1.36	Speed limit zone along Route 24 in Morris, Essex, and Union counties	25 N.J.R. 270(b)		
16:28-1.44, 1.83	Speed limit zones along Route 27 in North Brunswick and Franklin townships, and Route 71 in Monmouth County	24 N.J.R. 274(b)		
16:28-1.72	School zones along U.S. 206 in Lawrence Township	24 N.J.R. 4499(a)		
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth, and Middlesex counties	25 N.J.R. 271(a)		
16:28A-1.13	Restricted parking and stopping along U.S. 22 in Clinton Township	25 N.J.R. 273(a)		
16:28A-1.19, 1.45, 1.57	Restricted parking and stopping zones along Route 28 in Roselle Park, Route 94 in Hardyston, and U.S. 206 in Lawrence Township	24 N.J.R. 4499(b)		
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	25 N.J.R. 274(a)		
16:28A-1.112	Restricted stopping and standing along Route 138 in Wall Township	24 N.J.R. 4334(b)	R.1993 d.63	25 N.J.R. 598(a)
16:29-1.71	No passing zones along Route 41 in Camden County	25 N.J.R. 60(b)		
16:53-3.2	Autobus dimensions	25 N.J.R. 459(a)		
16:53-7.25, 7.26, 7.27	Autobus trolleys: safety standards	24 N.J.R. 4500(a)		
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
16:83	Conduct and safety of public in use of NJ TRANSIT equipment and facilities	24 N.J.R. 3674(a)	R.1993 d.42	25 N.J.R. 323(a)
<b>Most recent update to Title 16: TRANSMITTAL 1992-12 (supplement December 21, 1992)</b>				
<b>TREASURY-GENERAL—TITLE 17</b>				
17:1-1.10	PERS and TPAF pension systems: minimum adjustments	24 N.J.R. 4501(a)		
17:1-4.12	Purchase of service credit in State retirement systems	24 N.J.R. 4239(b)	R.1993 d.81	25 N.J.R. 710(c)
17:2-1.4	Public Employees' Retirement System: election of member-trustee	24 N.J.R. 3690(a)	R.1993 d.78	25 N.J.R. 711(a)
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)		
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)		
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:9-4.2	State Health Benefits Program: part-time deputy attorneys general	24 N.J.R. 2345(a)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)	R.1993 d.2	25 N.J.R. 68(a)
17:32	State Planning Rules	25 N.J.R. 461(a)		
<b>Most recent update to Title 17: TRANSMITTAL 1992-9 (supplement November 16, 1992)</b>				
<b>TREASURY-TAXATION—TITLE 18</b>				
18:1-1.3	Background investigations of applicants for Division positions	24 N.J.R. 4240(a)	R.1993 d.82	25 N.J.R. 711(b)
18:5-2.3, 3.2-3.13, 3.20-3.25, 4.3-4.7, 5.8	Cigarette Tax rate and stamps	24 N.J.R. 2415(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:12-6, 6A	Tax exemptions and abatements for rehabilitated properties	24 N.J.R. 4335(a)		
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:26-3.7	Interest rate on late payments of estate taxes	24 N.J.R. 4240(b)		
18:35-1.17	Gross income tax credit for excess contributions to Workforce Development Partnership Fund	25 N.J.R. 62(a)		
18:35-1.27	Gross Income Tax: interest on overpayments	24 N.J.R. 2419(a)		
18:35-2.11	Gross income tax refunds and homestead rebates: priorities in claims to setoff	24 N.J.R. 1967(b)	R.1993 d.94	25 N.J.R. 711(c)
18:38	Litter Control Tax	24 N.J.R. 4502(a)		
18:38	Litter Control Tax: correction to proposal Summary	25 N.J.R. 462(a)		

**Most recent update to Title 18: TRANSMITTAL 1992-7 (supplement December 21, 1992)**

**TITLE 19—OTHER AGENCIES**

19:3, 3B, 4, 4A	Hackensack Meadowlands District rules	24 N.J.R. 4503(a)		
19:8-1.2	Garden State Parkway speed limits	24 N.J.R. 3222(a)	R.1993 d.33	25 N.J.R. 345(a)
19:8-1.2	Garden State Parkway speed limits: reopening of comment period	24 N.J.R. 4241(a)		
19:9-2.7	Turnpike Authority construction contracts: withdrawal of bid for unilateral mistake	25 N.J.R. 62(b)		
19:25-16.18, 16.24, 16.39	ELEC: Public financing of primary election for Governor: administrative corrections	_____	_____	25 N.J.R. 711(d)

**Most recent update to Title 19: TRANSMITTAL 1992-8 (supplement December 21, 1992)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)		
19:41-1.3	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:41-1.3, 1.4	Issuance of temporary license credentials	24 N.J.R. 4335(b)	R.1993 d.84	25 N.J.R. 712(a)
19:41-1.3, 14.3	Renewal of employee licenses	25 N.J.R. 276(a)		
19:41-9.8, 9.9, 9.9A, 9.10, 9.11, 9.14, 9.15, 9.16, 9.17	Commission fees	24 N.J.R. 4337(a)	R.1993 d.85	25 N.J.R. 713(a)
19:41-11.1	Casino licensee-bus company agreements	24 N.J.R. 3694(a)	R.1993 d.4	25 N.J.R. 200(a)
19:41-14	Renewal of employee licenses	24 N.J.R. 2133(a)	R.1993 d.34	25 N.J.R. 345(b)
19:42-5.9, 5.10	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:43-14.1, 14.2, 15.2	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:45	Accounting and internal controls	25 N.J.R. 277(a)		
19:45-1.1, 1.2, 1.7, 1.8, 1.10-1.16, 1.19, 1.20, 1.20A, 1.25, 1.27, 1.33, 1.46	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A-1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34	Authorized financial statements: acceptance and processing	24 N.J.R. 3232(a)		
19:45-1.1, 1.2, 1.16, 1.18, 1.20, 1.33, 1.46	Exchange of coupons for chips at gaming tables	24 N.J.R. 4243(a)	R.1993 d.75	25 N.J.R. 717(a)
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	24 N.J.R. 3251(a)		
19:45-1.4	Casino records of ownership	25 N.J.R. 63(a)		
19:45-1.8	Records retention schedules	24 N.J.R. 3694(b)		
19:45-1.9, 1.9B, 1.9C, 1.46	Complimentary services and items	24 N.J.R. 4505(a)		
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	25 N.J.R. 278(a)		
19:45-1.16, 1.33, 1.42, 1.44	Replacement slot cash storage boxes	25 N.J.R. 279(a)		
19:45-1.42	Reading and recording bill changer meters	24 N.J.R. 4026(a)	R.1993 d.36	25 N.J.R. 348(a)
19:46-1.2, 1.3, 1.5, 1.6, 1.9-1.20, 1.27	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.10, 1.17, 1.20	Use of card reader device in blackjack	24 N.J.R. 2351(a)	R.1993 d.38	25 N.J.R. 367(a)
19:46-1.16, 1.18	Primary storage areas for cards and dice; daily collection of used cards and dice	24 N.J.R. 4339(a)	R.1993 d.86	25 N.J.R. 719(a)
19:46-1.18, 1.19	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		
19:47-1.2, 1.4	"Craps-Eleven" wager	25 N.J.R. 63(b)		
19:47-1.3-1.6, 2.3, 5.1, 5.6, 8.2	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)

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19:47-2.1, 2.6, 2.9, 2.15	Use of card reader device in blackjack	24 N.J.R. 2351(a)	R.1993 d.38	25 N.J.R. 367(a)
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-11.2, 11.5-11.8A, 11.10, 11.11	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		
19:50-1.4, 3.6	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:51-1	Persons doing business with casino licensees	24 N.J.R. 3225(a)		
19:51-1.2, 1.14	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:51-1.2	Casino service industries: licensure criteria	24 N.J.R. 4241(b)	R.1993 d.35	25 N.J.R. 368(a)
19:53-1.13	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)
19:54	Tax obligations of casino licensees	25 N.J.R. 280(a)		
19:55	Casino simulcasting of horse races	24 N.J.R. 3695(a)	R.1993 d.37	25 N.J.R. 348(b)

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## NOTES



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